

During a tenancy, information for landlords

This is a collection of fact sheets for residential landlords on topics that might arise during a tenancy:

- Right of entry
- Putting up the rent
- Passing on water charges
- Natural disasters
- Non-payment of rent
- Alteration requests from your tenant
- Subletting requests from your tenant
- Serving notice
- Residential tenancy complaints

All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website:
www.fairtrading.nsw.gov.au.

Many of them are in the *Being a landlord, During a tenancy* section.

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Right of entry

Information for landlords

One of your responsibilities as a landlord is to ensure that the tenant's reasonable peace, comfort and privacy are not interrupted by you or any other person under your control. Tenants have a basic right to quiet enjoyment of the premises they are renting.

For this reason, the law restricts the amount of access you, your agent or anyone acting on your behalf can have to the property while it is being rented out. You are only allowed to enter the premises at certain times for certain reasons. You must not 'drop by' unannounced, look over the fence or do anything else to disturb the tenant's privacy and quiet enjoyment.

Notice prior to entry

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

In addition to reasons below, you, your agent, or any other person acting on your behalf can access the property at any time for any reason if the tenant consents, which may also include agreeing to a shorter period of notice.

Reason	Notice required
To inspect the premises (no more than four 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 a burst water pipe, a gas leak or a blocked toilet (see clause 19 of the lease for a full list of matters considered to be urgent repairs)	None

To comply with health and safety obligations, such as installing smoke alarms	At least 2 days notice
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To obtain a property valuation (no more than once in 12 month period)	At least 7 days notice
To show a prospective tenant (only permitted in the last 14 days before the existing tenancy is due to end)	Reasonable notice on each occasion
In an emergency	None
If you have tried to contact the tenant and been unable to do so and have reasonable cause for serious concern about the health or safety of the tenant or other occupants	None
If you reasonably believe the premises have been abandoned	None
To show the premises to prospective buyers	2 weeks written notice before first inspection. Subsequent inspections as agreed with the tenant or, if there is nothing agreed, no more than 2 inspections per week, with 48 hours notice each time
In accordance with a NSW Civil and Administrative Tribunal order	As determined by the Tribunal

Time limits on access

In most circumstances, access is not permitted on Sundays, public holidays or outside the hours of 8am to 8pm. You must not stay on the premises longer than is necessary to achieve the purpose given for access.

Where practical, the tenant should be notified of the time when access will be required. These limits do not apply in an emergency, to carry out urgent repairs, if the tenant agrees otherwise, if the premises are abandoned or if access is in accordance with a Tribunal order.

Presence of tenant

Your tenant does not have to be present at the time of entry so long as proper notice (if any is required) has been given. You can access the premises using your own set of keys. However, if a dispute is likely to arise it may be advisable not to enter the premises in the absence of the tenant and seek a Tribunal order instead. Likewise, it is best not to force entry if you do not have a set of keys or the locks have been changed by the tenant, unless it is absolutely necessary.

Problems gaining access

The law says that tenants must not deny or hinder your right to access if proper notice has been given. If your tenant refuses to allow you access to the premises, an application can be lodged with the Tribunal seeking an order allowing entry.

Penalties apply

If the access requirements are not followed, penalties can be imposed and the tenant could seek compensation through the Tribunal along with other orders.

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
Act limits reasons for gaining access	Same limits apply, plus new rights of access added for valuations and if there are concerns about the tenant's wellbeing

Reasonable access to show prospective buyers if reasonable notice given	Schedule of access to be agreed on, or no more than 2 inspections per week with 48 hours notice
7 days notice for general inspections	7 days written notice for general inspections

Putting up the rent

Information for landlords

If you are considering increasing the rent there are rules you need to follow.

When can rent be increased

If the fixed term period of the agreement has ended and the tenant is on a continuing (periodic) tenancy you may increase the rent. Rent can be increased during the fixed term of the agreement only in certain circumstances (see below).

Notice of a rent increase

Before any rent increase can take effect, you must give the tenant at least 60 days notice in writing before the date the increase becomes payable.

The notice must:

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

You can write your own notice or use the *Model rent increase notice* provided by Fair Trading.

If the notice is being posted, you must allow an extra 4 working days for delivery. More information about serving notices is available on the *Serving notice* page on the Fair Trading website.

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 term in the agreement must spell out the amount of the increase or the exact 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 the tenant has agreed to the increase in the agreement, you still

have to provide the minimum 60 days written notice before the increase can take effect.

During a fixed term agreement of 2 years or more the rent can be increased at anytime (so long as 60 days notice is given) but cannot be increased more than once in any 12 month period. It is important to note that the tenant can give 21 days written notice and vacate before the rent increase becomes payable and is not considered to have broken the agreement early.

You cannot avoid having to give 60 days notice by signing a new agreement with the same tenant. The notice still has to be given 60 days before the rent increase can take effect.

Failure to provide proper notice could result in fines being imposed as well as an order from the NSW Civil and Administrative Tribunal to pay back any unlawful increase to the tenant for the previous 12 months.

If you have entered into a tenancy without having a written agreement in place you cannot increase the rent during the first 6 months. For more information refer to the *Completing a tenancy agreement* page on the Fair Trading website.

You cannot ask the tenant to 'top-up' the bond following a rent increase. For more information refer to the *Taking a bond* page on the Fair Trading website.

Negotiating with the tenant

After you have given notice, the tenant may approach you asking to have the increase reduced or withdrawn. If you agree on a smaller increase you do not have to serve another notice - the agreed rent simply becomes payable from the same day as the original notice. However, it is a good idea to write down the agreed amount and give the tenant a copy.

Disputes about rent increases

The tenant can apply to the Tribunal if they believe that a rent increase is excessive. The Tribunal has the power to set the rent for the next 12 months. The Tribunal will look at evidence about whether the proposed rent is in line with the general market rent for similar premises in the area or a similar locality. It will also look at evidence of other factors, such as the state of repair of the premises, any improvements done by the tenant and when the last rent increase occurred. It is a matter for the tenant to prove their case if they apply to the Tribunal.

	need to state in the agreement
Tribunal considers market rents and other relevant factors if tenant claims excessive increase	Similar factors considered with the addition of when the last increase occurred

Frequency of rent increases

You should carefully consider the frequency and amounts of rent increases. Regularly reviewing the rent you are charging and increasing it by small amounts helps to keep the rent at or near the market level. This in turn avoids the need for large increases that can cause the tenant to leave or encourage them to challenge the increase. On the other hand, some landlords see merit in keeping the rent below the market level in order to retain a long-term good tenant and avoid the costs associated with having the premises vacant and finding a new tenant. Timing is another factor to take into account. For example, most landlords would choose not to give a rent increase notice that took effect just before Christmas.

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
Minimum 60 days notice of rent increase	Same
Rent could only increase during a fixed term agreement, however long, if stated in the agreement	Flexibility to increase the rent in fixed terms of 2 years or more without

Passing on water charges

Information for landlords

You can pass on water usage charges to your tenant provided all the minimum criteria have been met.

Minimum criteria

The minimum criteria for passing on water usage charges are:

- 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 considered water efficient if it meets these standards.

Water efficient devices	Minimum water efficiency 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.

You do 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

The presence of the water efficiency measures needs to be noted on the ingoing Condition report for the premises. There is no requirement to provide a report from a plumber or the water supply authority certifying their existence. However, it may help to keep:

- invoices or file notes of work done
- receipts for any items bought
- packaging, warranties or instruction manuals.

If you are unsure if your existing taps and showerheads meet the required standards you could carry 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.

For any water fixtures made from 2005 onwards, the easiest way to check if they meet the required efficiency standard is to look for products with a Water Efficiency Labelling and Standards scheme (WELS) rating of three stars or higher. A three star rating indicates a maximum flow rate of 9 litres per minute. WELS is Australia's water efficiency labelling scheme which rates fixtures including taps and showerheads according to water efficiency.

Charges limited to water usage

Only the water usage (volume) costs charged by the water supplier may be charged to the tenant. Other costs (fixed) on the water bill, such as water service or sewerage services are payable by you and cannot be charged directly to the tenant. You cannot charge the tenant an administration fee for passing on the bill, late fees or additional amounts.

Asking the tenant for payment

The tenant has to be given a copy of the part of the water bill you receive setting out the water usage charges or some other evidence showing how you calculated how much they owe for water. You must seek reimbursement within 3 months of getting the bill, otherwise the tenant doesn't have to pay. The tenant must be given 21 days to pay the amount they owe you. If you request payment within the 3 months, and the tenant doesn't pay, you can still take action to recover the money later on (eg. by making a claim against the bond).

Things to know

Some important points to remember include:

- If the tenant removes or tampers with the water efficiency devices they still have to pay for water usage.
 - 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 accurately calculate each tenant's water usage.
 - These provisions apply to all tenancies, regardless of the terms of any existing tenancy agreements. However, tenants in social housing premises may have a different system applied for calculating and paying for water usage. Contact Housing NSW for further information.
 - If the water usage charges suddenly go up by a significant amount, this may indicate a leak or faulty appliance in the premises requiring your urgent attention. It may be helpful to contact the water supplier about average water usage.
 - You cannot save up all the water bills and pass them on to the tenant at the end of the tenancy. Payment must be requested within 3 months of receiving each bill.
- You must pay the water supplier's bill, even if you have not yet received the tenant's payment.
 - When the tenant vacates the property, check that the water efficiency measures are still in place when you complete the final condition report.

Natural disasters

Information for landlords

Fair Trading can help you with renting issues in a natural disaster.

As a landlord it is vital you know what your rights and responsibilities are if the rental property has been affected by a natural disaster, such as a flood, bushfire or storm damage.

Common questions are answered below.

My rental property was destroyed. How can I end the lease?

If the property was destroyed or is unfit to live in, the lease has effectively ended.

The most practical approach is to issue the tenant with a notice to immediately vacate the property.

Alternatively, you can agree with the tenant and sign documentation to end the lease and to reclaim your bond.

Do I have to provide the tenant with alternative accommodation?

You are not legally obliged to do so; your responsibilities end with the termination of the tenancy. However, you may choose to provide assistance.

Am I responsible for cleaning debris caused by a disaster?

Yes. You are responsible for maintaining the property, including cleaning or clearing any debris caused by a disaster.

Before arranging cleaning, contact the local authorities, such as the emergency services, who may already have a cleaning program in place.

The tenant is only responsible for any cleaning that arises from their use of the property.

When engaging cleaning and repair services, be wary of travelling con men posing as tradespeople - see the warning below.

Am I responsible for arranging for services to be restored?

If a utility service has been cut off because of damage to the property, you are responsible for repairing the property so the service can be restored.

If there is no damage to the property, the tenant must contact the utility company and arrange for services to be restored.

Should I reduce the rent because the property has been damaged?

If a disaster has caused damage to property facilities such as the garage, swimming pool, sheds or outbuildings, you should consider reducing the rent.

In these circumstances, the tenant has the right to apply to the NSW Civil and Administrative Tribunal to assess whether a reduction is reasonable.

Can I claim all or part of the bond to cover damage caused to my rental property by a disaster?

No. You can only claim bond money at the end of a tenancy for the cost of repairs or cleaning due to the tenant's use of the property.

Do I need to compensate the tenant for their possessions that were destroyed or damaged in this disaster?

Normally, a tenant is responsible for their own contents insurance.

Unless the landlord can be shown to be negligent, the tenant will bear the cost of damage to their possessions.

Can I inspect the damage to my rental property?

If your property has been destroyed or damaged so that it is unfit to live in, you can inspect it at any time, as long as you have the permission of local authorities.

You should contact the police or emergency services before travelling to a disaster area.

The usual arrangements for inspections apply if your property is still leased and the tenants are living there. You can inspect the property provided you give the tenant appropriate notice.

Warning - travelling con men

Travelling con men and unlicensed traders target disaster-affected areas, offering cheap, cash-only repairs to roofs, driveways and fences.

If you take up such offers, you run the risk of:

- substandard work
- being left out of pocket if the trader disappears before finishing the job
- being unable to contact the trader once they have been paid, and
- paying more to have a legitimate tradesperson repair shoddy work.

Before you employ a tradesperson:

- contact your insurer first, to check your policy and find out whether you are covered
- ask around for suitable tradespeople
- check they are licenced to do the work
- get quotes
- do not pay in full up front
- avoid tradespeople who give only mobile numbers and first names. You may not be able to contact them if there is a problem
- be wary of door-to-door offers - get proof that the tradesperson is offering the deal legally and appropriately
- check with your local council whether a building permit or other approval is needed for the repair work.

Ask for a tradesperson's full name and licence number so you can check it. You can check a tradesperson's licence on the Home building licence check page on the Fair Trading web site.

For trades that do not require registration, ask the tradesperson for the membership number of their professional association. Members of such organisations will satisfy the association's membership criteria, which usually includes insurance and working to professional codes of ethics.

To report travelling con men, contact Fair Trading by calling 13 32 20.

Special laws for emergency repairs

Businesses can approach consumers and supply urgent goods and services after a natural disaster in some circumstances, without complying with all unsolicited sales requirements - for example, door-to-door sales requirements.

These emergency repair contracts can be used when:

- the supplier doing the work has a relevant state, territory or national licence to do the work - for example, a building or contractor's licence
- the contract is only for repairs required because of the disaster, and the property is in a state of emergency declared by the Commonwealth, state or territory government
- the repairs are only to:
 - rectify a hazard or potential hazard on the person's property
 - protect the health and safety of persons on the property
 - prevent substantial damage to the person's property.

In such cases, the business:

- does not have to give or notify the consumer of the 10-business-day cooling-off period
- can provide the goods or services under the contract and accept payment with 10 business days.

A trader must not call on a consumer:

- before 9am or after 6pm, Monday to Friday
- before 9am or after 5pm on Saturday
- on a Sunday or public holiday.

Non-payment of rent

Information for landlords

The tenant not paying rent is one of the most serious issues you may face. It is important that you deal with it as early as possible.

Early action

When the tenant is a few days late in paying the rent it is good practice to send them a reminder letter of the overdue payment. They may have just forgotten to pay the rent on that particular day. If you have a phone number for the tenant, giving them a call may also be a good idea.

If the tenant is regularly late paying the rent you may wish to discuss with them changing the method of payment to one which provides more certainty, such as a direct debit arrangement. Centrelink offers a free direct bill-paying service (called Centrepay) to customers receiving payments from Centrelink. This service includes rent paid to social housing providers as well as private landlords and agents.

One of the terms of the tenancy agreement is that the tenant agrees to pay rent on time. If they are not doing this you can apply to the NSW Civil and Administrative Tribunal for an order that the tenant comply with the terms of the agreement. This type of application is best suited where a tenant is frequently or regularly a few days late with the rent. However, it is important to note that such an application cannot result in the termination of the tenancy if the non-payment of rent continues.

Serving a termination notice

If the tenant falls more than 14 days behind with the rent you can serve them with a termination notice, giving them 14 days to vacate the property. The notice must:

- be in writing
- be signed and dated by you or your agent
- be properly addressed to the tenant
- give the day on or by which the tenant is requested to vacate

- state that the grounds or reason for giving the notice is because the tenant is more than 14 days behind with the rent
- include a statement informing the tenant that they do not have to vacate if the tenant pays all the rent owing or enters into, and fully complies with, a repayment plan agreed with the landlord.

You can write your own notice or use the *sample notice to terminate a tenancy agreement form - for landlords* provided by Fair Trading.

Repayment plans

A repayment plan is a plan you may agree on with the tenant for the outstanding rent to be paid over a period of time, on top of the normal rent payments. You and the tenant would both need to agree on the plan, including the frequency and amounts to be repaid.

Both parties need to be practical and reasonable, so that all rent owing is paid as quickly as possible. The arrangement should be put in writing and signed by both parties to avoid any misunderstanding or disputes over what was agreed. If you cannot agree on a repayment plan the Tribunal may help to set one up as part of the conciliation process once the matter gets to the Tribunal.

Applying to the Tribunal

You need to consider when is the best time to apply to the Tribunal for a termination order.

You can apply to the Tribunal at the same time as or after serving the notice to the tenant. If you apply at the same time as giving notice, this will save you time, as the Tribunal will be able to list your hearing sooner (as early as possible after the termination date in the notice). The application fee is not refundable if the tenant leaves or catches up the rent and you do not need a hearing. However, the application fee is a relatively small amount compared to the rent that could potentially be saved. If you have applied and then find you do not need a

hearing, it is important to let the Tribunal know so the hearing can be cancelled.

Alternatively, you can wait until after the termination date in your notice before applying to the Tribunal. This way you will know if you need a hearing, because the tenant has not moved out or has not paid (or is not paying off) the rent owed. However, this could add up to 2 weeks before obtaining a hearing date compared to applying at the same time as giving notice. The application cannot be made more than 30 days after the termination date in the notice, unless you apply for and the Tribunal grants you an extension.

There is a specific form for Tribunal orders relating to termination for non-payment of rent which can be downloaded from the NSW Civil and Administrative Tribunal website.

Guarantee of tenancy continuing

There is a general guarantee that the tenancy will continue if the tenant catches up with the rent or you agree to a repayment plan and they stick to it. If this happens after you have already applied to the Tribunal then a termination order would not generally be able to be made.

If the tenant catches up the rent or enters into and complies with a repayment plan after the Tribunal has given a termination order, the general guarantee of the tenancy continuing still applies. This means you are unable to enforce the order even if you have already obtained a warrant for possession. In a practical sense the tenant has up until the Sheriff enforces the warrant for possession to pay the rent they owe. The exception is where the tenant frequently pays late.

Frequent late payers

If the tenant has a history of paying the rent late, you can apply for an order from the Tribunal that the guarantee of the tenancy continuing does not apply, at the same time that you apply for the termination order. The Tribunal can

make an order that the tenancy will definitely end, even if the tenant pays the rent they owe. Whether the Tribunal makes such an order is a matter for the Tribunal to decide based on the evidence presented at the hearing. Evidence could include your rent records, reminder letters sent to the tenant or previous applications to the Tribunal about rent.

Certain costs recoverable

As well as unpaid rent, you can recover from the tenant the cost of:

- replacing rent deposit books or rent cards lost by the tenant
- the amount of any bank fees for dishonoured rent cheques, insufficient funds for direct debit rent payments and the like.

You cannot recover other costs such as Tribunal application fees, or the cost of enforcing the warrant or impose any form of penalty (eg. interest) for late payments.

Alteration requests from your tenant

Information for landlords

From time to time, a tenant may ask for permission to make a small change or add a fixture to the premises at their own expense, to increase their comfort or security. You should give careful consideration to such requests.

No changes without consent

The tenant must first seek your written consent before they add a fixture or make any renovation, alteration or addition to the premises. If they do so without your consent they are breaching the terms of the tenancy agreement. You can apply to the NSW Civil and Administrative Tribunal for orders that the tenant comply with the agreement and restore the premises to the previous condition.

If the tenant approaches you with a request to add a fixture or make a change to the premises and you think it is reasonable, you may give your written consent for the tenant to make the change. You could also think about whether you would prefer to arrange and pay for the work to be done yourself. That way you retain total control over who does the work, how it is carried out and the types of materials (if any) that are used.

Reasonable refusal

You may not unreasonably refuse to give the tenant 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 to say no. These include work which:

- involves structural changes (eg. knocking out a wall)
- is not reasonably capable of being rectified, repaired or removed
- is not consistent with the nature of the property (eg. installing modern fixtures on a heritage property)
- is prohibited under a law (such as a strata by-law)
- involves painting (see below for more information).

This is not an exhaustive list. There may be other reasonable reasons to decline the tenant's request.

You should let the tenant know what the reason is if you say no. It is best to do this in writing. Be aware that if the tenant thinks you are not being reasonable they can apply to the Tribunal for permission to make the change.

Painting the premises

Whether the tenant can paint the premises (inside or out) is a matter over which you have total control. The Tribunal cannot give consent to a tenant if you say no. Before you give the tenant permission to paint the premises it may be a good idea to get them to show you which colour/s they intend to use. You may also want a say in which brand of paint is used and how many coats are applied. Make sure these details are included in your written consent. It is good practice to arrange an inspection after the work has been completed to see that the painting has been done to a satisfactory standard.

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 the tenant to agree on or for the Tribunal to resolve if a dispute arises.

Examples of some common types of requests you may think are reasonable include:

- installing extra window safety devices for small children
- installing additional security features above what is required
- 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 Foxtel
- replacing the toilet seat
- installing a grab rail in the shower for elderly or disabled occupants.

Compensating the tenant

Generally, an added fixture or change made by the tenant is at their expense, unless you agree otherwise. For example, you may offer to cover the cost of the materials or give a rent reduction if you let them paint the premises. It is entirely up to you. The tenant cannot go to the Tribunal seeking to get money back for improvements they make.

Removal of fixtures at end of tenancy

If your tenant paid for any fixtures in the premises, they are allowed to remove them at the end of the tenancy, as long as they notify you or your agent of any damage this causes. The tenant must then either pay for the cost of repairs, or arrange to repair any damage to a satisfactory standard. If you paid for the fixture in some way, then the tenant is not allowed to remove it without your consent.

If necessary, you can apply to the Tribunal for an order that prohibits the tenant from removing a fixture, or an order that the tenant pay for repairs to any damage they have caused in removing a fixture.

If the tenant does not remove a fixture they have added by the time they hand back possession they cannot come back and get it later on. It ceases to belong to them and forms part of the premises. It is up to you whether or not you wish to keep it in the premises for the next tenant.

Remedies for unsatisfactory work

You can apply to the Tribunal seeking an order against the tenant for the cost of rectifying work done by or on behalf of the tenant if:

- the work was not done to a satisfactory standard, or
- if it is not rectified it is likely to adversely affect your ability to rent the premises in the future to other tenants.

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

Sub-letting requests from your tenant

Information for landlords

A tenant may ask permission to sub-let or transfer part of the premises or the whole tenancy. This cannot be done without consent. You should give careful consideration to such requests.

The different arrangements

There can be a number of different arrangements in place where tenants are sharing a home.

Sub-letting

Is where the tenant enters into a formal agreement with somebody else to rent part of the premises (eg. the garage or granny flat) or the whole premises to them. In effect, they are taking on the role of landlord for the sub-tenant. However, they remain your tenant and continue to be responsible for paying the whole of the rent to you. There is no contractual arrangement between you and the sub-tenant. For example, the sub-tenant would pay their rent to your tenant not to you. Your tenant would be responsible for the actions of the sub-tenant. If, for instance, the sub-tenant caused damage to the premises your tenant would need to fix it or pay for the cost of the repairs. They may be able to recover the cost by taking action against the sub-tenant.

Transferring or assigning the lease

This is different to sub-letting and involves the tenant's rights and obligations under the tenancy agreement being transferred to another person. Your tenant may wish to transfer the whole tenancy to a new tenant or only part of the tenancy (ie. by taking in a new co-tenant). The new tenant is either jointly responsible to you (in the case of a new co-tenant) or wholly responsible to you if the whole tenancy is transferred. The existing tenancy 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 agreement, 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 the tenant wishes to have somebody stay with them in the premises on an informal basis. This could be a family member, friend or stranger and it may be a temporary or longer term 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, not a tenant, even though they may be paying money to the tenant. The tenant is responsible for the actions of any occupants or guests they allow in the premises.

Consent of the landlord

Your tenant must first seek your written consent before they sub-let or transfer any part of the premises. If they do this without your consent they are breaching the terms of the tenancy agreement. You can take action through the NSW Civil and Administrative Tribunal for an order that they comply with the agreement.

If the tenant wants to sub-let or transfer the whole premises, approval is completely at your discretion. If you say no the tenant cannot apply to the Tribunal.

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

If the tenant just wants to have an additional occupant living with them they do not need to tell you who they are or get your consent, as long as they do not exceed the maximum number of permitted occupants stated on the tenancy agreement.

Reasonable refusal

As mentioned above, you cannot unreasonably say no to a request from the tenant to sub-let part of the premises or take in a new co-tenant. The law gives some examples of when it would be reasonable to say no.

These are:

- if the maximum number of occupants permitted under the tenancy agreement 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 you 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 the tenant's request. You should let the tenant know what the reason is if you say no. It is best to do this in writing. Be aware that if the tenant thinks you are not being reasonable they can apply to the Tribunal.

Costs of sub-letting

You cannot charge the tenant for giving consent to 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 you 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 NSW Fair Trading so that the names on the bond record can be updated.

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.

Serving notice

To your tenant, landlord or agent

There are a number of circumstances where it is necessary to give written notice, such as putting up the rent, notifying access for an inspection or to terminate the tenancy agreement. When serving a notice it is important that you follow the correct procedures. If you don't do this you run the risk of causing an unnecessary delay or having to start the whole process all over again or incurring extra costs.

Amount of notice required

The amount of notice you need to give depends on the circumstances. Different notice periods apply when a notice is served:

- from a tenant to end the tenancy agreement
- from a landlord to end the tenancy agreement
- to increase rent
- to access the premises to carry out an inspection.

The Fair Trading website has more information about these specific notice periods.

Counting days

Counting the days for giving notice is set out in the *Interpretation Act 1987*, which covers all Acts in NSW.

Days in the notice period (eg. 14 days) are calendar days, not working days. All days of the week are counted, including weekends and public holidays. However, the day on which the notice is served is not counted.

Example: If a tenant faxes or hand delivers a 21-day termination notice on 1 February, the 21 days are counted starting from 2 February. The 21st day is 22 February.

If notice is sent by post, an extra 4 working days has to be added to the notice period. Weekends, public holidays and bank holidays are not counted in the 4 days.

Example: If a landlord posts a 14-day termination notice on Friday 4 February, the 4 working days for postage starts on Monday 7 February. The notice is considered to

have been served on Thursday 10 February. The first day of the 14-day notice period starts on Friday 11 and ends on Thursday 24 February.

How to serve notice

You should not use registered mail to serve notices, as it may not be collected. You cannot serve a notice by pinning it on or slipping it under the person's door. Likewise, you cannot serve notices by email, text message or over the phone.

A notice can be given by:

- handing it to the tenant or landlord in person or
- handing it to somebody aged 16 or over at the tenant's or landlord's residential or business address or
- personally putting it in the tenant's or landlord's letterbox, in an envelope addressed to them or
- posting it to the tenant or landlord at the address they have specified for receiving notices (eg. care of an agent) or
- faxing it to the tenant or landlord
- if the tenant or landlord is a corporation, by faxing or posting it or handing it to a person aged 16 or over at the corporation's address.

Where there are two or more tenants or landlords, the notice may be given to either one and does not need to be given to both.

Proof of service

You don't have to be able to prove that the notice was received by the other person, only that it was properly served. Therefore, keep a copy of each notice, including some form of written record of the method you used to serve it, and the date it was sent or handed to the person.

If you are delivering a notice in person or putting it in a letterbox it may be a good idea to take along a witness. If a dispute is likely to arise it is better to err on the side of

caution. Use more than one means of service or allow an extra day for service to be safe.

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

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

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Residential tenancy complaints

Tenants, landlords and property managers

NSW Fair Trading provides a free complaint service for tenants, residents, landlords and property managers with tenancy-related matters or disputes.

How can Fair Trading assist with my matter?

The tenancy complaint service offered by Fair Trading is a voluntary process between any parties involved in a tenancy matter or dispute. An experienced Fair Trading officer will aim to finalise the matter through mutual agreement.

Fair Trading will bring parties together by teleconference or on site to finalise the matter.

The tenancy complaint process does not include:

- orders that require action or payment from either party
- a Fair Trading officer inspecting property to determine fault or attribute blame, which falls outside their role.

A video is available that demonstrates how the complaint service works: *Help with tenancy problems* contains examples of cases that were based on real complaint scenarios. It can be viewed on Fair Trading's YouTube channel.

What type of tenancy matters can Fair Trading assist with?

Fair Trading can assist with tenancy matters about:

- repairs and maintenance
- non-urgent health and safety issues
- alterations to premises
- access to premises or inspections
- non-compliance with tenancy agreement
- water saving devices and smoke alarms
- provision of correct notices
- ending a tenancy or breaking a lease
- condition reports

- rental increases
- rental arrears of less than 14 days.

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

Fair Trading cannot assist with tenancy matters about:

- public or social housing matters
- urgent health and safety issues
- an Apprehended Violence Order (AVO) or violence related matters
- lockouts and evictions
- termination
- illegal activity
- serious damage to the property
- rental arrears in excess of 14 days
- rental bond matters.

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

The Tenants Advice and Advocacy Services provide assistance and advocacy to all tenants, particularly vulnerable or social housing tenants. Find your nearest Tenants Advice and Advocacy Service at www.tenants.org.au or call 8117 3700.

What should I do before seeking Fair Trading intervention?

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

1. Discuss your concerns and explain the problem with the other party. Let the other party express their concerns and position.
2. Both of you should be ready to discuss issues related to the matter. This could include:
 - invoices
 - receipts
 - tenancy agreements
 - notices provided
 - condition reports

- quotes
 - correspondence.
3. Both of you should suggest ways to resolve the complaint and be willing to negotiate a mutually agreeable settlement.
 4. Call Fair Trading on 13 32 20 to discuss your problem.

If you are not able to resolve the matter yourself, you can lodge a tenancy complaint with Fair Trading to begin the complaint process.

When will the complaint process take place?

The time to finalise the complaint depends on parties' availability and the level of inquiries to be made by Fair Trading.

Generally Fair Trading endeavours to finalise a matter within 30 days of receiving the complaint.

What to expect from the complaint process

If Fair Trading is able to help both parties reach an agreeable settlement, we will finalise the complaint without any further intervention.

Where agreement cannot be reached, parties will be advised of the outcome and recommended to seek independent advice or lodge a claim with the NSW Civil and Administrative Tribunal (NCAT).

During the complaint process

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

What is the role of the Fair Trading Officer?

Fair Trading officers are qualified and skilled in handling complaints.

The Fair Trading officer will:

- provide impartial advice to the parties with the complaint
- allow all parties to put forward their points
- explain the relevant matters in the complaint
- confirm that all relevant matters have been discussed, and
- put forward suggestions as to the best way to finalise the complaint.

The Fair Trading officer will not:

- take sides or represent either party
- continue with the complaint handling process if the parties do not show willingness to reach an agreeable settlement, or
- offer any legal advice.

The tenancy complaint process is voluntary and its success depends on parties cooperating. Fair Trading cannot force either party to continue with the complaint process.

What happens if there is no resolution?

If the complaint is not finalised either party may lodge a claim with the NSW Civil and Administrative Tribunal (NCAT).

NCAT can request a report from Fair Trading on any complaint process conducted. This report is provided directly to NCAT.

The NCAT can make orders which are binding on the parties. These may include monetary payment, ending a tenancy agreement, or repair work to be completed. The maximum claim through NCAT is \$30,000.

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

How can I access the tenancy complaint service?

If you are not able to resolve the matter yourself, you can lodge a tenancy complaint with Fair Trading to begin the complaint process.

For more information about Fair Trading's tenancy complaint service call 13 32 20.

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