

## Starting a tenancy, information for landlords

This is a collection of fact sheets for residential landlords on topics related to starting a tenancy:

- Deciding to use an agent
- Discrimination in the rental market
- Completing a tenancy agreement
- Filling out a condition report
- Taking a bond
- Safety and security
- Residential tenancy and real estate complaints

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

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

May 2017

# Deciding to use an agent

## Information for landlords

Once you have decided to rent out your property, one of the first decisions you will need to make is whether to find a tenant and manage the property yourself or employ a real estate agent to do it for you.

It needn't be all or nothing. You can decide just to use an agent to go through all the applications, find a suitable tenant and do the necessary paperwork. Once this is done, you can then take on the day-to-day management. However, it's not as easy as just collecting the rent.

Managing the property yourself can save you the cost of the agent's fees and help build a more direct relationship with your tenant. This may be an option to consider if you live nearby, have a good knowledge of the tenancy laws and have the spare time to do all the work (such as inspecting the property, organising repairs or going to the NSW Civil and Administrative Tribunal when needed).

If you don't live near the property, are busy or don't know the laws very well, then using an agent may be a better and more practical option.

Whichever way you go, remember that owning a rental property, just like any other form of investment is not without risks. It is important to ensure that the premises is adequately insured. You might also want to consider taking out landlord insurance. This may cover you for losses of rental income if, for example the property becomes uninhabitable, your tenant leaves owing more than the bond or there is a vacancy for some period.

## Use a licensed agent

If you decide to use an agent to let and/or manage the tenancy on your behalf, check that they are properly licensed. All property managers must either hold a licence or have a certificate of registration and work under the supervision of a licensed agent. In a large block of units, the agent may be an on-site residential property manager. If you have any doubt that the agent you are interested in using is properly licensed, you can

do a licence check on the Fair Trading website or call 13 32 20.

## Selecting an agent

You don't have to engage the services of the real estate agent from whom you purchased the property. The choice is completely yours. It is worth putting some time and effort into choosing the right agent to manage your property. Speak to at least three different agents before you decide. Don't just base your decision on who is the cheapest. You should also think about what services they are going to provide and how well your investment will be looked after. Choosing the wrong agent may cost you a lot of money if they don't do their job properly.

Consider asking the following questions before you decide:

- How long have they been a property manager?
- How many properties do they currently manage themselves?
- How long has the property manager been with that particular agency?
- How do they handle requests for repairs from tenants?
- Do they check repairs once they have been carried out?
- What systems are in place for locating and screening prospective tenants?
- What steps do they take if the tenant is late with the rent?
- How many times have they been to the Tribunal and what is their success rate?
- How much are the management fees and what is included and excluded?

## Agency agreement

When you engage an agent you will need to sign a written contract called a management agency agreement. The fees and conditions of the agreement are negotiable.

Make sure all matters you want the agent to handle, and any specific conditions, are listed clearly in the agreement to help avoid misunderstandings between you and the agent. For instance, you should consider these questions:

- How often do you want inspections to take place?
- Do you want a copy of inspection reports and other documents to be forwarded to you?
- Do you want to be contacted about all repairs or should the agreement say only repairs costing more than a nominated amount (eg. \$200) require your prior approval?

Management agency agreements usually contain a clause stating that a notice period applies if either party wants to end the agreement (eg. 30 days or 60 days written notice).

## What to expect of an agent

A managing agent's responsibilities include:

- finding suitable tenants
- ensuring the tenancy agreement is correctly completed and signed
- lodging the rental bond
- managing the tenancy for you on a day-to-day basis, including:
  - arranging repairs
  - collecting the rent and maintaining rent records
  - conducting regular property inspections
  - handling disputes that may arise
  - paying bills on your behalf (eg. water and council rates).
- paying the rent to you, less any costs and agency fees, either into your nominated bank account or by cheque. This is usually done monthly.

## Agency fees

Most agents charge a letting fee (eg. 1 week's rent) and a management fee based on a percentage of the gross weekly rental (usually between 5 - 12%) plus other fees

set out in the agreement. This could include advertising costs, preparing the tenancy agreement and representing you at the Tribunal in the event of a dispute.

## Changing arrangements

If you choose to manage the property yourself and things do not work out, you can always decide to go with an agent instead. If you use an agent and you are not satisfied with their services, you can choose to either take over managing the tenancy or find another agent. There may also be a change of agent if the property is sold to a new landlord. Naturally, the tenant needs to be advised of the change and NSW Fair Trading notified so that the bond records can be updated.

# Discrimination in the rental market

## Information for landlords

Everybody should be given a 'Fair Go' when renting or trying to rent a property. The view that 'it's my property so I can choose who I like' only goes so far. You have the right to choose the most suitable tenant provided no unfair discrimination occurs.

### Anti-discrimination laws

The law states that you, or your agent, must not discriminate against anyone, or harass them, because of their:

- race (colour, nationality or descent)
- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (gay men and lesbians)
- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against a person because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of their relatives, friends or associates.

As long as you are not discriminating on one of the above listed grounds you may rent to whoever you like. If you do not want smokers in your premises or tenants with pets, or if you reject an application because of a poor tenancy history or do not think the tenant can pay the rent there is no law to stop you from declining an application for that reason.

You should be aware that you may be liable for discriminatory acts by your agent. For example, if you tell the agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both you and the agent may be liable. It is no defence for the agent to say she or he was simply carrying out your instructions.

### Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be refusing to rent to people with children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

These are examples of possible indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant when you know that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant, or
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

One fair selection process is to rank people in order of when they lodge their application and then assess each application in turn for their capacity to pay the rent and maintain the property.

## Fair trading laws

Fair trading laws state that you must not engage in conduct that is, in the circumstances, misleading in connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

## Promote your good practices

It's good practice to tell tenants why they were unsuccessful with a tenancy application. If you don't give a legitimate reason, people may assume discrimination occurred. Giving reasons may help people to better understand your decision-making process.

If you are an agent it's also a good idea to develop a letting policy for your office. It should explain that your agency will not discriminate. Display the policy to show your clients and prospective clients that you will provide a fair and equal service. The Real Estate Institute of NSW *Letting Policy* (produced in association with the Anti-Discrimination Board) is one example you may wish to use.

You should also make sure that everybody who works in your business is aware of the law and does not themselves discriminate in their dealings with tenants or prospective tenants. If they do, you may be legally liable

for their unlawful actions unless you can show you took all reasonable steps to prevent them doing so.

## More information

NSW Anti-Discrimination Board  
Tel: 9268 5555 or 1800 670 812  
[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
Fair Trading enquiries 13 32 20  
TTY 1300 723 404  
Language assistance 13 14 50

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# Completing a tenancy agreement

## Information for landlords

A residential tenancy agreement (also called a lease) is an agreement between you and the tenant to live in your premises in return for payment of an agreed rent. The agreement is a legal contract which sets out the terms and conditions of the arrangement.

You need to complete and sign a written tenancy agreement at the start of each tenancy. Before the tenant signs the agreement they must be given a copy of the *New tenant checklist*.

### Updates to the tenancy agreement

Does the property you want to rent out have a swimming or spa pool? If so, from 29 April 2016, a copy of a valid certificate of compliance or occupation certificate (issued in the past 3 years) must also be provided to the tenant before entering into a new residential tenancy agreement. Pool owners wanting to rent out or sell their property should act now, as work may be needed before a certificate can be issued.

This requirement does not apply to properties in strata or community schemes with more than two lots, as these properties are already inspected by Councils every 3 years. The revised standard form residential tenancy agreement includes an updated clause relating to swimming pools or spa pools in strata or community schemes with more than two lots. An addendum is also available, which can be used with existing stock of the version of the residential tenancy agreement available prior to 29 April 2016. You will need to use either of these options before entering into a new residential tenancy agreement from 29 April 2016.

You will be in breach of the new residential tenancy agreement if you fail to provide the tenant with a copy of the certificate of compliance or relevant occupation certificate. Please visit the swimming pools page on the Fair Trading website for further information or contact your local council.

From 30 October 2016, the standard tenancy agreement also includes a requirement to notify tenants if the premises they want to lease is on the Loose-fill Asbestos Insulation register, or if the premises is added to the register during the tenancy. You can download a copy of the Frequently asked questions on the changes to the Residential Tenancies Regulation 2010 on the Fair Trading website.

### Types of agreement

There are two types of tenancy agreement.

#### Fixed term agreement

This is where the agreement is for a fixed period of time (such as for 6 or 12 months or other agreed period) and specifies an end date. A fixed term agreement is used at either the start of a tenancy or when the parties are renewing the agreement once the original fixed term period has ended.

#### Periodic (continuing) agreement

This is a tenancy for an indefinite period. You automatically move to a periodic agreement when a fixed term agreement ends, if the tenant remains and no new agreement is signed. You can have a periodic agreement from the beginning but this is uncommon. In a periodic agreement, you and the tenant must follow the rules set out in the original agreement (or in the prescribed standard agreement if there wasn't a signed agreement).

The rights and obligations under both types of agreements are generally the same. However, there are differences in relation to terminating the tenancy and rent increases.

If you fail to have a written agreement in the proper form at the start of a tenancy, penalties can be imposed. In addition, you are unable to evict the tenant without a reason or put the rent up during the first 6 months.

## Additional terms

There are 40 mandatory terms in the standard form of tenancy agreement. There are also two optional additional terms about 'break fees' and 'pets'. You need to decide if you want these two terms to stay in the agreement. If not, they will need to be deleted before anyone signs.

Other additional terms may be added to the agreement so long as they:

- do not conflict with the tenancy laws or any other laws and
- do not conflict with the standard terms of the agreement
- are not a term that is prohibited from being added to a tenancy agreement.

These are terms which would:

- require the tenant to have the carpet professionally cleaned, or pay the cost of such cleaning, at the end of the tenancy (except as part of a separate arrangement to allow the tenant to keep a pet on the premises)
- require the tenant to take out any form of insurance, such as home contents or public liability insurance
- exempt the landlord, agent or any other person from legal liability for any negligent act or omission
- require the tenant to pay a higher rent, a penalty or some other form of damages if they breach the agreement
- give the tenant a reduced rent or rebate for not breaching the agreement or
- require the tenant to use the services of a particular person or business to carry out their obligations under the agreement, such as a nominated lawn mowing or pool cleaning company.

Any additional terms which are prohibited or conflict with the law or the standard terms are void and unenforceable. Penalties can be imposed for including prohibited terms in a tenancy agreement.

## Giving the tenant a copy

You, or your agent, must give a copy of the tenancy agreement to the tenant at the time they sign it. If that copy has not been signed by the landlord, a fully signed copy must be given to the tenant as soon as possible. If the agreement is for a period of more than 3 years and needs to be registered with the Land and Property Management Authority, you should provide the tenant with a copy of the agreement as soon as possible after it has been registered.

## Cost of agreement

The tenant cannot be charged any fee for their copy of the agreement or the costs associated with filling it in. If you are using an agent, you can negotiate whether or not they will charge you for preparing and supplying the agreements, and how much, when entering into the agency management agreement. Stamp duty is no longer payable on residential tenancy agreements. However, if the agreement term is for more than 3 years, the tenant can be requested to pay the cost of registering it with the Land and Property Management Authority.

## Agreements of 20 years or more

If you are willing to offer a fixed term agreement of 20 years or more, the Act provides a large degree of flexibility. You are able to omit or vary most of the mandatory terms of the standard agreement. For instance, your agreement may provide for the tenant to take on the responsibility of maintaining the premises in return for a cheaper rent. The only things which you cannot alter in an agreement of 20 years or more are:

- the responsibility of the landlord to pay rates, taxes and charges
- the limit of no more than one rent increase per year
- access to the NSW Civil and Administrative Tribunal to resolve disputes and
- the grounds on which the agreement may be terminated.

Be mindful though that the tenant can apply to the Tribunal if they believe a term you have included in the agreement is in their view unconscionable, unjust, harsh

or oppressive. The Tribunal has the power to strike out such terms if it agrees.

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
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# Filling out a condition report

## Information for landlords

At the start of every tenancy you need to fill out a condition report. This records the general condition of the property, on a room by room basis, including fittings and fixtures. Fill it out with as much detail and accuracy as possible. The report will be a key piece of evidence at the end of the tenancy if there is a dispute about replacing missing items, paying for cleaning or damages.

### Completing the report

The condition report needs to be filled out before the tenant moves in. You need to give two copies of the report to the tenant either before or at the time they sign the tenancy agreement. Follow the 'How to complete' instructions on the first page of the report.

It is often minor damage which causes disputes so make sure all damage, however minor, is noted and suitably described. You may wish to take photos or videos and date these, to back-up the written condition report.

You should complete the report by doing a physical inspection, not by memory. The report should reflect the age and state of the premises. For example, if the property is not new and not recently renovated, existing damage or wear and tear needs to be noted.

The report may be adapted to suit individual premises, eg. by adding extra rooms for larger properties. If required, attach more pages and be sure to sign and date them. Note the number of extra pages on the original report.

A condition report must be completed whether or not a rental bond is taken. However, a condition report is not needed if the same parties renew a tenancy agreement or if a new co-tenant or occupant moves in.

### Returning the report

The tenant must complete their part of the condition report and return a copy to you within 7 days of receiving it. If the tenants have added anything you disagree with, you can apply to the NSW Civil and Administrative Tribunal for an order to amend the comments.

If the tenant fails to return a copy, you may send them a reminder letter or you can apply to the Tribunal for an order directing the tenant to complete and return the report. If they still do not return it, in the event of a bond dispute, the Tribunal will most likely accept your report unless the tenant has other evidence to the contrary.

Keep the condition report for the duration of the tenancy as you will need to complete it when the tenancy ends. Place it where it won't be accidentally lost or destroyed.

# Taking a bond

## Information for landlords

### Property agents and self-managing landlords must be registered with Rental Bonds Online

From **30 January 2017**, property agents and self-managing landlords must be registered with Rental Bonds Online (RBO), Fair Trading's easy and secure service to manage bonds online. Agents and landlords must also offer the service to new tenants as the first option for lodgement of their bond. To register as a user, read the How can I get started section below.

A rental bond is money paid by the tenant as a form of security in case they breach the tenancy agreement. A bond should not be treated as a substitute for careful selection of prospective tenants. All bonds must be lodged with Fair Trading and you can make a claim against the bond for certain reasons after the tenancy ends.

Most tenants do the right thing and get their bond back at the end of the tenancy. However, sometimes a bond does not cover the damage and rent owed by a tenant. If you are concerned about this risk, consider taking out landlord insurance.

### Amount of rental bond

While not compulsory, taking a rental bond is highly recommended unless there is a good reason not to.

Be aware that a rental bond:

- cannot be an amount more than 4 weeks' rent. This is paid at the start of the tenancy and applies to all NSW rental properties, whether furnished or unfurnished. Higher bonds cannot be charged for tenants with pets, children or for any other reason. Also, you cannot request or receive additional bond payments ('top-ups') during the tenancy.

- must be in money, not in a form such as personal goods or a written guarantee from the tenant's friends or relatives. The only exception is for Tenancy Guarantees issued by Housing NSW. These guarantees (of up to \$1,000 over and above any bond paid) help those with a limited or poor rental history to rent a place in the private rental market.
- does not need to be paid before signing the tenancy agreement. This includes applicants for the tenancy and those who have paid a holding fee. The tenant may decide to transfer the bond into a bank account before signing the tenancy agreement but they are not obliged to do so.
  - However, this does not prevent a landlord or real estate agent from requiring the tenant to provide evidence that the rental bond has been deposited with Fair Trading before the tenancy agreement is signed.
  - If the tenant is using Rental Bonds Online, they must lodge the bond with Fair Trading prior to the agreement being finalised.
- is for the whole tenancy: if there is more than one tenant, you cannot take a separate bond from each of them.
- can be paid in instalments if you as the landlord allow this. Learn more in the 'Bond instalments' section below.

### Rent in advance

At the beginning of the tenancy, the tenant can be required to pay the first 2 weeks' rent. This is not another form of bond. The tenant is simply paying their rent in advance, meaning that no rent is due until 2 weeks have passed. Besides a rental bond and 2 weeks' rent in advance, you cannot ask the tenant for any other money at the start of a tenancy.

### Bond lodgement

If you have employed an agent to manage your property, they should arrange the bond lodgement process on your

behalf, either through Rental Bonds Online or the paper-based process. However, if you are acting as a self-managing landlord, you are responsible for managing the bond lodgement process with NSW Fair Trading.

You can lodge a bond through Rental Bonds Online, Fair Trading's easy and secure service to manage bonds online, or a paper-based process.

If you are already registered, you can log on at <https://rbo.fairtrading.nsw.gov.au/agent/login>

### Rental Bonds Online - how can I get started?

If you are using an agent and your tenant has agreed to use the service, the agent will manage this process for you.

If you are a self-managing landlord, you will need to be set-up on Rental Bonds Online.

1. Download and complete the Rental Bonds Online - Landlord/Owner Proof of Identity and Registration Form (PDF size: 68kB)
2. Email [rboregistration@finance.nsw.gov.au](mailto:rboregistration@finance.nsw.gov.au) your completed form with a certified copy of the required proof of identity documents (as outlined in the form), endorsed as a true copy by a Justice of the Peace OR  
Visit any Service NSW Centre with the completed form and the required original proof of identity documents. Locate your nearest Service NSW centre on the Service NSW web page or call 13 77 88.
3. Once NSW Fair Trading has verified your Proof of Identification documents with your completed form, you will receive emails (to the address provided in the form) with your new Landlord Code and instructions to activate your account.

### Rental Bonds Online users

Once you are a registered user, you can start inviting your tenants to use the service to manage their rental bond. First, confirm the tenant is willing to use Rental Bonds Online and has internet access, a mobile phone, an email account, a Visa, Mastercard or the ability to pay by BPAY and an Australian bank account.

When discussing the online service with tenants, it may help to direct them to these resources:

- Getting started with Rental Bonds online - information for tenants factsheet (PDF size: 345Kb)
- the Rental Bonds Online - for tenants page on our website
- our video *Rental Bonds Online: the smart way to manage your bond*, giving an overview of the service.

If the tenant pays the bond online by Visa or Mastercard, you will be immediately notified by email or SMS that the bond is held by Fair Trading. BPAY payments may take up to 3 days before the tenant's financial institution advises Fair Trading that the bond has been paid.

### Getting help with Rental Bonds Online

If you are already a registered user, you can log on to <https://rbo.fairtrading.nsw.gov.au/agent/login> to access online help. This will guide you through processes such as how to lodge a bond or make a claim.

You can also refer to the information you received when you registered, or the Frequently Asked Questions page on our website.

If you still can't find what you are looking for or need further help, access support by emailing [rbosupport@finance.nsw.gov.au](mailto:rbosupport@finance.nsw.gov.au) or making a free call to 1800 990 724.

### Paper based bond lodgement

Where a tenant chooses to use the paper based process, you can complete the bond lodgement as follows:

1. Download a Rental Bond Lodgement form from the Links section in Rental Bonds Online.
2. Fill out and get the tenant to sign the Rental Bond Lodgement form.
3. Post the Lodgement form along with a cheque/ money order for the amount of the bond to the address on the form, or lodge it in person at any Service NSW Centre.

If letting and managing the property yourself, you have 10 working days to lodge the bond with Fair Trading. You

will receive confirmation (with the bond number) from Fair Trading once the bond is processed.

If you have employed an agent, they will lodge the bond and handle the paperwork. Agents have 10 working days from the end of each month to lodge all bonds received during that month. These are maximum timeframes and you can lodge a bond sooner.

You are advised to accept bond payments in either cash, bank cheque or bank transfer from the tenant's account.

Fair Trading does not accept liability for a tenant's dishonoured personal bond cheque. If the cheque bounces, this means you have no bond or security. You will need to try to collect the money again and re-lodge the bond or issue a termination notice for breach of the tenancy agreement.

When a bond is taken from a tenant they must receive a receipt or record of the payment details on the tenancy agreement. The bond must be lodged with NSW Fair Trading. A landlord or agent cannot keep the money or put it into an account in the tenant's name.

## Bond instalments

Most landlords request the tenant to pay the bond in one lump sum before handing over the keys to the property. However, landlords may allow a tenant to pay in instalments.

If you agree to this, you can keep the part payments until the whole bond is paid then lodge the bond with NSW Fair Trading in one amount. However, if this takes more than 3 months, you will need to lodge what you have received no later than every three months.

If you and the tenant are Rental Bonds Online (RBO) users and have initially agreed that the bond can be paid in instalments, you can request that the tenant pay a bond instalment using RBO. An email will be sent to the tenant. This will prompt them to log on to their RBO account and pay the instalment. You will be notified when

the tenant pays the instalment. Once paid, the instalment amount is included in the full bond amount held.

## Penalties apply

Fair Trading can take you to court or issue fines if you do not follow the bond rules. This includes taking more than 4 weeks' rent as a bond or not lodging a bond on time.

From 30 January 2017, if a landlord or agent fails to invite a new tenant to lodge their bond using Rental Bonds Online, prior to accepting a bond, a penalty of \$2,200 may apply.

## Updating bond records using Rental Bonds Online

Log on to your account and go to 'Your Details'.

To update your details, you can also contact Rental Bonds Online Security and Support by email: [rbosupport@finance.nsw.gov.au](mailto:rbosupport@finance.nsw.gov.au) or phone: 1800 990 724 (free call).

## Updating bond records using paper-based forms

If the name of the landlord, agent or co-tenants changes during the tenancy, a Change of Shared Tenancy Arrangement or Change of Managing Agent/Owner form will need to be completed and lodged with NSW Fair Trading.

# Safety and security

## Information for landlords

### Smoke alarms

Most building fire fatalities occur while people are asleep. A smoke alarm is an effective early warning device designed to detect smoke and alert building occupants to the presence of a fire. Installed in the correct location, it increases the time available for safe escape.

Since 2006 when the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006 came into effect, smoke alarms have been mandatory in all homes and other shared accommodation buildings where people sleep.

The Smoke Alarms Regulation specifies which types of buildings need smoke alarms installed, the types of alarms, where they are to be located and other matters. For more information visit the Smoke alarm page on the Fire and Rescue NSW website or the Department of Planning website.

Responsibilities of landlords and tenants under the Residential Tenancies Act are:

- Landlords are responsible for installing smoke alarms in rented premises.
- Landlords have the right of access to rented premises to fit or maintain smoke alarms after giving the tenant at least 2 days notice.
- Neither the landlord nor the tenant are, except with reasonable excuse, permitted to remove or interfere with the operation of a smoke alarm fitted in the rented premises.
- Where a smoke alarm is of the type that has a replaceable battery, it is recommended that the landlord put a new battery in at the commencement of a tenancy.

- After the tenancy begins, the tenant is responsible for replacing the battery if needed. Fire and Rescue NSW can assist elderly tenants or those physically unable to change a smoke detector battery.
- The condition report includes a specific reference to smoke alarms so that tenants and landlords are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.

**IMPORTANT** - Owners of residential property who rent out their premises as holiday accommodation are responsible for installing smoke alarms and replacing batteries.

### Swimming pools and spa pools

As a landlord, if the property you are leasing has a swimming pool you need to ensure that the pool is fenced and meets pool fencing requirements. Please visit the Pool fencing requirements page on the Fair Trading website for further information.

Pool owners are required to register their pools on the NSW Government Swimming Pool Register. From 29 April 2016, all properties with a swimming pool or spa pool that are sold or leased must have a valid certificate of compliance or a relevant occupation certificate issued within the last three years. A copy of the certificate must be given to the tenant/s or attached to the sale contract. Visit the Swimming pools page on the Fair Trading website for further information about how to register and obtain a compliance certificate.

### Window and balcony safety

Each year, around 50 children fall from windows or balconies in Australia. Many suffer serious injuries. Sometimes these falls are fatal.

There are a number of simple, commonsense steps you can take to reduce this risk. For example locks or guards

can be fitted to windows so that they cannot be opened more than 12.5cm, except by an adult.

Fair Trading has produced two short videos about window safety presented by DIY guru and TV personality, Rob Palmer. They include easy step-by-step instructions on how to install window safety devices yourself. You can watch the new Window safety video series on our YouTube channel.

The NSW tenancy laws require landlords to provide and maintain locks and security devices to make the premises reasonably secure. Landlords cannot unreasonably refuse permission for tenants to make minor changes to rental premises, such as installing child safety window locks.

Go to the Window and balcony safety page on the Fair trading website for more information.

## Security

Landlords 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 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.

Landlords do 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.

Tenants can change or add locks or security devices with the landlord's consent, or if it is reasonable to do so, such as in an emergency (eg. if the premises have been burgled and keys are missing or if their key breaks off in the lock). The tenant should give the landlord a copy of

the new key within seven days. If the premises are not reasonably secure, tenants should raise this matter with the landlord or agent as soon as possible.



# Residential tenancy and real estate complaints

## Tenants, landlords and agents

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

### How can Fair Trading assist with my matter?

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

The complaint process **does not** include:

- enforcing orders that require action or payment from either party
- a decision on evidence resulting in a legal determination or an Order
- a Fair Trading officer inspecting property to determine fault or attribute blame, which falls outside their role.

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

### What type of matters can Fair Trading assist with?

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

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

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

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

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

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

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

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

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

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

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

### What will Fair Trading do to help resolve complaints?

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

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

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

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

### What is the role of the Fair Trading Officer?

The Fair Trading officer will:

- provide impartial advice to the parties with the complaint
- allow all parties to put forward their points
- explain the relevant matters in the complaint

- confirm that all relevant matters have been discussed
- make suggestions as to the best way to finalise the complaint, and
- refer applicable strata disputes to Fair Trading's free strata and community mediation service.

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

The Fair Trading officer will not:

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

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

### What happens if there is no resolution?

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

NCAT can make orders which are binding on the parties. These may include monetary payment, ending a tenancy agreement, or repair work to be completed.

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

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

### How can I access the complaint service?

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