

Starting a tenancy, information for landlords

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

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- Completing a tenancy agreement (pages 6 – 7)
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All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website in the *Being a landlord, Starting a tenancy* section.

August 2011

Deciding to use an agent

For landlords of residential properties

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 Consumer, Trader and Tenancy 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:

- how often 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 (e.g. \$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 (e.g. 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 (e.g. 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 (e.g. 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.

At a glance

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

Discrimination in the rental market

Information for landlords of rental properties

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.

At a glance

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

More information

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

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*.

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 forty 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
- however, there are a number of terms which are 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 Consumer, Trader and Tenancy 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.

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
\$15 agreement preparation fee could be charged to tenants	No agreement preparation fee payable by tenants
Terms and conditions of all agreements the same, regardless of length	Flexibility given to parties of agreements of 20 years or more to vary or omit standard terms of the agreement
Additional terms could be added to an agreement so long as they did not conflict with any laws or the standard terms of the agreement	Same limitation on additional terms, but some terms are now specifically prohibited from being added to an agreement, including compulsory carpet cleaning

Filling out a condition report

At the start of every tenancy you need to fill out a condition report. This is a record of the general condition of the property, on a room by room basis, including fittings and fixtures. You should take your time to fill it out with as much detail and accuracy as possible. The condition report will be a key piece of evidence at the end of the tenancy if there is a dispute about who should pay for cleaning, damage or the replacement of missing items.

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 rather than obvious damage so make sure any damage, however minor, is noted and is suitably described.

You may wish to take photos or videos, which have the date on them, 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 has not been recently renovated, any existing damage or wear and tear needs to be noted on the report.

The condition report form may be adapted to suit individual premises, e.g. by adding extra rooms if the property is larger. If there is not enough room on the report, attach extra pages and make sure they are signed and dated as well as noting the number of extra pages on the original condition report.

A condition report needs to be filled out whether or not a rental bond is taken. However, a condition report is not needed when the same parties are renewing a tenancy agreement or when a new co-tenant or occupant moves in.

Returning the report

The tenant is required to complete their part of the condition report and return a copy to you within 7 days of receiving it. Check to see if they have added anything which you disagree with. You can apply to the Consumer, Trader and Tenancy Tribunal for an order to amend comments made on the report by the tenant.

If the tenant fails to return a copy, you may wish to send them a reminder letter or you can apply to the Consumer 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 comes up with some 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.

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
Condition report was part 2 of standard agreement	Condition report no longer part of standard agreement
Prescribed form of condition report	Improvements have been made, including: <ul style="list-style-type: none"> • Removing references to washing machines and refrigerators • Adding built-in wardrobes, dishwashers, air-conditioners and garden sheds

	<ul style="list-style-type: none">• Emphasising security and health issues• Providing space for water efficiency devices to be noted.
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www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

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Taking a bond

Information for landlords

A rental bond is money you can request the tenant to pay 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, some times a bond is not enough to cover the damage and rent owed by a tenant. If you are concerned about this risk you could consider taking out landlord insurance.

Amount of rental bond

Rental bonds are not compulsory, but it is highly recommended that a bond be taken unless there is a good reason not to.

No more than four weeks' rent can be charged as a rental bond. This applies to all rental properties in NSW, whether furnished or unfurnished. Higher bonds cannot be charged for tenants with pets, children or for any other reason.

A rental bond must be in money, and cannot be in any other 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 \$1000 over and above any bond paid) help those with a limited or poor rental history to rent a place in the private rental market.

A rental bond can only be accepted when the tenant signs the tenancy agreement. Bonds cannot be taken before the agreement is being entered into, such as from applicants for the tenancy or from those who have paid a holding fee. You can only take one bond for a tenancy. That is, if there is more than one tenant, you cannot take a separate bond from each of them.

Rent in advance

At the beginning of the tenancy, the tenant can be required to pay the first two 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 two weeks have passed. Besides a rental bond and two weeks' rent in advance, you cannot ask the tenant for any other money at the start of a tenancy.

Bond lodgement

When you take a bond from a tenant you must give a receipt or record the payment details on the tenancy agreement. The bond must be lodged with NSW Fair Trading. You cannot keep the money yourself or put it into an account in the tenant's name.

You need to fill out and get the tenant to sign a Rental Bond Lodgement form. These forms are available from any Fair Trading Centre or by calling 13 32 20. Lodgement forms cannot be downloaded from this website as each form has a unique barcode.

Bonds can be lodged by posting the Lodgement Form along with a cheque/money order for the amount of the bond to the address on the form or in person at any Fair Trading Centre.

If you are letting and managing the property yourself you have 10 working days in which 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 in which to lodge all bonds received during that month. These are maximum timeframes and you can lodge a bond sooner.

It is advisable to only accept bond payments in the form of 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.

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 sometimes allow a tenant to pay the bond in instalments.

In these situations 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 in 3 monthly cycles.

Bond top-ups

You cannot request or receive additional bond payments (also known as 'top-ups') during the course of a tenancy. The maximum amount of bond that can be charged is the amount equivalent to the first 4 weeks' rent at the start of the tenancy.

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.

Updating bond records

If the name or contact details 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.

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
Maximum bond for unfurnished premises is 4 weeks' rent	Same
Higher bond permitted for furnished premises	Maximum is 4 weeks' rent
7 calendar days to lodge bond	Landlords have 10 working days Agents have 10 working days from the end of each month
Bond top-ups unclear	Bond top-ups not permitted
Maximum 2 weeks rent in advance if weekly rent is \$300 or less, one month if weekly rent exceeds \$300	Maximum 2 weeks rent in advance regardless of rent amount. The tenant can choose to pay more if they wish, but cannot be required to do so.

Smoke alarms

In residential premises

To enhance safety and minimise loss-of-life in building fires, the NSW Parliament enacted the *Building Legislation Amendment (Smoke Alarms) Act* in July 2005. The Act allows regulations to be made to require smoke alarms to be installed in existing buildings in which people sleep.

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.

From 1 May 2006, when the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006 came into effect, owners of residential property are responsible for ensuring smoke alarms are installed.

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. Contact details for more information about the requirements under the Regulation are listed in this fact sheet.

Changes to fair trading laws

Several fair trading laws were amended as a result of the smoke alarm laws and this information summarises these changes for the people that are affected.

Landlords and tenants

Under the Residential Tenancies Act:

- Landlords are responsible for the installation of 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.

Owners and residents of residential parks

Under the Residential Parks Regulation:

- Park owners who rent out on-site accommodation under tenancy agreements are responsible for installing smoke alarms in rented premises.
- Park owners have the right of access to rented premises to fit smoke alarms after giving the tenant at least 2 days notice.
- Neither the park owner nor the resident is, 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, the park owner must put a new battery in at the commencement of a tenancy.
- After the tenancy begins, the resident is responsible for replacing the battery if needed. However, if the resident is physically unable to change the battery the resident should notify the park owner as soon as practicable after becoming aware of the need for it to be replaced.

- The resident is not responsible for the replacement of batteries in 'hard-wired' smoke alarm systems that have battery back-up. This is the responsibility of the park owner.
- The condition report section of the tenancy agreement must include a specific reference to smoke alarms so that residents and park owners are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.

The above obligations on park owners equally apply to residents who sub-let their moveable dwellings.

Strata scheme lot owners

In a strata scheme:

- Owners of lots can install smoke alarms in their lots without having to obtain approval of the owners corporation.
- There is an obligation on lot owners to repair any damage to common property caused by the installation of a smoke alarm.

Lot owners who rent out their strata scheme residential property should note their responsibilities as landlords in relation to smoke alarms under the *Residential Tenancies Act 2010*.

Operators and residents of retirement villages

Under the Retirement Villages Regulation:

- Operators are responsible for the installation of smoke alarms and the replacement of all required batteries in premises occupied by residents.
- Operators, or persons authorised by operators, have the right of access to premises occupied by residents to install smoke alarms and to replace batteries after giving the resident at least 2 days notice.
- The condition report section of the occupancy agreement must include a specific reference to smoke alarms so that residents and operators will be able to note the presence of smoke alarms at the beginning of the occupancy.

At a glance

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

More information

For more information about the type, location and number of smoke alarms that are required to be fitted to the various classes of residential premises, contact:

Fire and Rescue NSW
www.fire.nsw.gov.au

Department of Planning
www.planning.nsw.gov.au
Tel: 1300 858 812