

Mould

About mould

Moulds are fungi that need moisture and organic material to grow. When disturbed or dried out, they release spores that can cause illness in some people. They may also cause structural damage if left untreated.

Mould can cause a state of disrepair at rented premises. This can be the result of a breach of the residential tenancy agreement by the landlord or the tenant (e.g. the landlord fails to attend to dampness or the tenant fails to ventilate the premises).

Rights and obligations

You must:

- keep the premises 'reasonably' clean
- tell the landlord about any damage to the premises as soon as possible
- mitigate loss – take reasonable steps to limit or avoid loss (see below).

The landlord must:

- provide the premises 'reasonably' clean and fit to live in
- keep the premises in 'reasonable' repair (except where the disrepair is caused by the tenant breaching the tenancy agreement)
- mitigate loss.

The condition report At the start of the tenancy, the landlord/agent must note on the condition report if there are any signs of mould and dampness. (Whether or not they note the presence of mould/dampness, they cannot avoid the obligation to keep the premises in reasonable repair during the tenancy.)

You can add your own comments under 'Additional comments on health issues'.

Mitigation of loss Examples include:

- a tenant avoiding damage to their clothes by removing them from a built-in wardrobe where mould is growing
- a landlord promptly fixing damage to a bathroom wall before mould growth can set in (whether or not the tenant caused the damage).

Decide what to do

You may want:

- to stay at the rented premises and have them repaired
- to end your tenancy and leave.

If you want to stay

Tell the landlord/agent that they need to arrange for repairs. Write them a letter telling them what needs fixing and by when. Give a clear deadline. Keep a copy of the letter and a record of any conversations as evidence that you have notified them.

If the landlord does not promptly arrange for repairs, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for orders (see below).

If you are going to move out temporarily while repairs are done, make a clear agreement in writing about:

- rent reduction
- how long you will be away
- who will be responsible for goods at the premises or how your goods will be stored.

Applying to the NSW Civil and Administrative Tribunal for orders

You can apply for one or more of the following orders:

- that the landlord do the repairs you have specified – apply within 3 months of the landlord failing to do repairs by your deadline
- that the rent is reduced from when you told the landlord/agent about the need for the repairs until repairs are done (not for social housing tenants who get a rent rebate) – apply at any time before the end of the tenancy
- that the landlord compensate you for losses you suffered because they did not do the repairs – apply within 3 months of the landlord failing to do repairs by your deadline
- that all or part of the rent is paid to the Tribunal until the repairs are done

People who are not named on the tenancy agreement as tenants (e.g. children) cannot apply to the Tribunal.

Applying for an order for repairs You must be able to show that:

- the premises are not in 'reasonable' repair
- it is not your fault
- the landlord/agent knew about the need for repairs
- you told them about it (e.g. you wrote them a letter), or
- they ought reasonably to have known about it (e.g. they inspected the premises)
- the landlord/agent did not get the repairs done in a reasonable time.

Applying for a rent reduction

The Tribunal may make an order that the rent is or was excessive due to a reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises (e.g. a room becomes unusable due to mould growth).

If the Tribunal finds that the rent is excessive, it will make an excessive rent order. It will specify:

- the amount that the rent must not exceed
- the day from which this maximum rent applies – for a period of up to of 12 months.
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Applying for compensation You can apply for order/s that the landlord compensate you for economic loss such as the destruction of or damage to your belongings.

You may also apply for an order that the landlord compensate you for physical inconvenience you have suffered. Discuss your case with your local Tenants Advice and Advocacy Service first.

You must be able to show that your loss was caused by the landlord's failure to do repairs. The Tribunal may not order compensation if you have not mitigated your losses.

Evidence You must back up your claims with evidence. This may include expert reports on the presence of mould in the premises (e.g. from a scientist, council building/health inspector, builder). Such reports can be costly so you may need to rely on other evidence.

The condition report is important evidence of the state of the premises at the start of the tenancy. Other evidence may include:

- your tenancy agreement
- correspondence with the landlord/agent
- photos and drawings of the premises
- samples of the mould (safely gathered and contained)
- receipts for expenses
- printed materials (such as factsheets) about mould and its effects.

Outcomes of Tribunal cases

In *Bunbury v Fletcher* [2015] NSWCATAP 194 (9/9/15) the Tribunal found that the landlord had breached the obligation to maintain the premises in reasonable condition. The Tribunal ordered 25% rent reduction and \$15,000 compensation to the tenants for their losses. Including the cost of expert evidence, the tenants' losses were greater than \$15,000.

In *Bannister v Cheung* [2014] NSWCATCD 105 (19/6/14) the Tribunal found that the landlord had breached the obligation to repair, but not the obligation to provide habitable premises. Compensation of \$480 to the tenants was ordered. The tenants had claimed more than \$13,000. The Tribunal gave no weight to evidence of (mould) inspection by unqualified witnesses. The Tribunal found that the tenants had not mitigated their loss and were not entitled to further compensation.

Personal injury

If someone in your household has been made ill by mould, seek medical advice. Consult a solicitor or your local Community Legal Centre (02 9212 7333, clcsw.org.au) about whether to take legal action.

The NSW Civil and Administrative Tribunal is not the best place to take a personal injury claim – the maximum compensation it can order is \$15,000.

Further information

Mould, your home and your health (NSW Health factsheet): <http://www.health.nsw.gov.au/environment/factsheets/Pages/mould.aspx>

Your local Public Health Unit: phone 1300 066 055