

## Starting a tenancy

### The residential tenancy agreement

The residential tenancy agreement is a contract. It has standard 'terms' that are the tenant's and landlord's rights and obligations.

Tenancy agreements are usually in written form. They can also be oral (e.g. a conversation with the landlord), or partly written–partly oral. All agreements must follow the *Residential Tenancies Act 2010*.

A landlord should provide the tenancy agreement in writing. If not, then during the first 6 months of the tenancy, they cannot increase the rent and cannot end the tenancy without a legally specified reason.

There are two types of agreement:

- fixed term – for a specified period (e.g. 6 months)
- periodic – no fixed term is specified.

### Additional terms

The landlord may include additional terms in the standard tenancy agreement if:

- both you and the landlord agree to them
- they do not conflict with the *Residential Tenancies Act 2010* or any other laws
- they do not conflict with the terms of the standard agreement.

### Tenancy agreements in share housing

If you rent part of the premises from another tenant, it is in your interest to have a written tenancy agreement with them.

### Landlord/agent to provide information

#### Before signing a tenancy agreement

If a landlord decides to enter into a tenancy agreement with you, they (or their agent) must not knowingly hide any of these 'material facts' from you:

- the premises have been subject to serious flooding or bushfire in the last 5 years
- the premises have significant health/safety risks that are not apparent on inspection
- the premises have been the scene of a serious violent crime in the last 5 years
- council waste services will be different from others in the council area
- you cannot get a free residential parking permit (in an area where only paid parking is available)
- the premises have a driveway or walkway that others can legally use.

The landlord (or their agent, if the agent is aware) must also tell you if either of the following apply:

- they propose to sell the premises (if they have prepared a contract for sale of the premises)
- a mortgagee has started court proceedings to enforce a mortgage over the premises.

#### On signing a tenancy agreement

The landlord/agent must give you a NSW Fair Trading *New tenant checklist*. If you are renting in a strata scheme, they must give you a copy of the strata by-laws within 7 days.

#### Landlord's/agent's contact details

Before or when you sign the tenancy agreement, the landlord/agent must give you these contact details in writing (or include them in the tenancy agreement):

the name, phone number and business address of the landlord's agent (if any) and the name and phone number or other contact details of the landlord

(if there is no agent) the business or residential address and phone number of the landlord

(if the landlord is a corporation) the name and business address of the corporation.

## **Costs at the start**

A landlord/agent can ask you to pay only:

- a holding fee
- rent in advance
- a bond.

Get a detailed receipt for any payments you make.

## **Financial help**

The Rentstart loan scheme helps disadvantaged tenants in the private rental market with money for bond and rent in advance. Apply through Housing NSW (phone 1300 468 746).

## **Holding fees**

A landlord/agent may ask you to pay a holding fee on approval of your application for a tenancy. The most they can ask for is one week's rent.

The landlord/agent can hold only one fee at a time. On receiving a holding fee, they cannot enter into an agreement with another prospective tenant for 7 days (or longer, if you both agree).

Upon signing the tenancy agreement, the fee goes toward the rent from the first day of your tenancy.

The landlord/agent must refund the fee if:

- they decline to enter into the tenancy agreement, or
- you refuse to enter into the tenancy agreement because the landlord/agent made any false or misleading statement, or they failed to tell you any 'material facts'.

If you otherwise decide not to enter into the tenancy agreement, the landlord/agent can keep the fee.

## **Rent in advance**

The landlord/agent or the tenancy agreement cannot require you to pay more than 2 weeks rent in advance (you may choose to pay more). They cannot demand further rent until it falls due and cannot ask for a post-dated cheque.

## **Bond**

The bond is money you pay at the start of the tenancy as security in case you do not follow the terms of the tenancy agreement.

- A bond must only be in the form of money.
- A landlord/agent must take only one bond for a tenancy agreement.
- A bond must not be more than an amount of 4 weeks rent.
- A landlord/agent must not require that you pay a bond before you sign a tenancy agreement.

## **The condition report**

The landlord/agent must give you a condition report when you move in. The report describes the condition of the premises. It must be filled in by you and the landlord/agent at the start and the end of the tenancy.

The landlord/agent must give you 2 copies – one to return to them and one for you to keep. Complete and return the report within 7 days.

If the landlord/agent does not give you a condition report, write a detailed report on the condition of the premises yourself and have a witness sign and date it.

**Completing the report**

Inspect the premises and complete the report carefully. The report will be used as evidence if the landlord/agent disputes the return of your bond at the end of the tenancy. (Consider taking photographs also.)

If the landlord undertakes to do cleaning, repairs, additions or other work, write details in the section 'Landlord's promise to undertake work'.

**Keys for each tenant**

The landlord/agent must give each tenant named in the tenancy agreement a free copy of the keys (or other opening devices) for the premises and for common property that the tenants are entitled to access.

**Disputes and complaints**

Get advice from your local Tenants Advice and Advocacy Service about applying to the NSW Civil and Administrative Tribunal (NCAT) or complaining to NSW Fair Trading. See also [www.tenants.org.au/complaining-to-nsw-fair-trading](http://www.tenants.org.au/complaining-to-nsw-fair-trading).

You can apply to the tribunal for order/s that:

- the landlord prepares and enters into a written tenancy agreement
- a term of the tenancy agreement is invalid because it is inconsistent with the law
- a holding fee is refunded to you (whether or not you enter into a tenancy agreement)
- the condition report is amended.

You can complain to NSW Fair Trading if a landlord/agent, for example:

- charges extra (other than holding fee, rent in advance and bond) before you enter into an agreement, or for preparing a written agreement
- withholds any 'material facts', proposed sale or mortgagee action, or makes any false/misleading statement before you enter into an agreement
- includes prohibited terms in the tenancy agreement asks for a bond of more than 4 weeks rent.