Breaking a lease early

Information for tenants

When you sign a fixed term tenancy agreement (lease) you are committing to stay for the full term. If your circumstances change and you want to move out before the end of the fixed term there are potential costs involved. There are some circumstances where a fixed term agreement can be terminated early without penalty. Refer to the section `Breaking the agreement without penalty´ below.

Costs you may have to pay

Breaking your tenancy agreement during the fixed term can be costly. You may have to pay:

- rent until a new tenant takes over or the fixed term period ends, whichever occurs first, and
- a percentage of the advertising costs and the agent's reletting fee (if the landlord uses an agent). For example, if you break the lease 9 months into a 12-month tenancy there is 25% of the lease remaining, so you would expect to pay 25% of these amounts.

If you need to end your agreement early you should give as much notice as you can. The landlord or agent must take all reasonable steps to find a replacement tenant as soon as possible. The more you can do to help, the less you may have to pay. You should make it as easy as possible for the landlord or agent to show the premises to potential new tenants.

If you are concerned that it is taking a long time to find a new tenant, you can check that the landlord or agent is trying to relet the property. Check the agent's website and their list of available rental properties.

The landlord and agent must try to keep your costs to a minimum. For example, if they do anything to make it harder to find a new tenant (such as asking for a higher rent or unreasonably rejecting potential tenants) you may not have to pay the full amount they are asking.

Once the new tenant is found the landlord or agent will request payment for the amount you owe. If you don't pay or if you disagree with the amount, the landlord or agent will usually claim from your bond or apply to the NSW Civil and Administrative Tribunal. Be aware that if you owe more money than the bond your name could be listed on a tenancy database. Such listings can make it difficult to rent again anywhere in Australia.

Optional break fee

You and the landlord can agree to include a break fee clause in the additional terms of your tenancy agreement. The break fee is a penalty you agree to pay if you move out before the end of the fixed term.

If the fixed term of the agreement is for 3 years or less the break fee is:

- 6 weeks rent if you move out in the first half of the fixed term
- 4 weeks rent if you move out in the second half of the fixed term.

If the fixed term is for more than 3 years and you and the landlord agree to include a break fee clause, you can agree on the amount and write it into the agreement.

Where there is a break fee in your agreement that is all you have to pay if you move out early. However, if the landlord or agent find a new tenant quickly it does not mean that you will get any of the break fee back. It is a fixed fee.

Breach by the landlord

If your landlord is not complying with the terms of your tenancy agreement you may be able to end your lease early without penalty, for example, if the landlord is failing to keep the premises in reasonable repair.

If you think the breach is serious enough to justify ending the tenancy, you can give 14 days written termination

notice to the landlord. If they disagree they can apply to the Tribunal.

Alternatively, you can apply to the Tribunal without giving notice. You will need to take evidence to satisfy the Tribunal that the breach justifies ending the agreement. The Tribunal can refuse to make an order if the landlord remedies the breach. If you had already moved out, you may have to pay the costs of breaking the lease.

Breaking the agreement without penalty

In limited circumstances you can break the agreement early without penalty. You can give 14 days written notice to end an agreement early if:

- you have accepted an offer of social housing (eg. from Housing NSW)
- you need to move into an aged care facility or nursing home (not a retirement village)
- you have obtained a final apprehended violence order against somebody you were living with that excludes them from the property
- the landlord has put the premises on the market for sale, and you were not told before signing the lease that the property would be sold.

You can give 21 days written notice to end an agreement early if:

- you have a fixed term agreement of more than 2 years and you have been given a rent increase notice or
- your co-tenant passes away.

If you give notice for any of these reasons you are able to end the agreement early without having to pay any compensation or other costs to the landlord. You are only liable for the rent until your notice ends and you hand back possession of the premises.

Mutual consent

Any tenancy agreement can be ended at any time if the landlord and tenant mutually agree.

Hardship

If it would cause you undue hardship to stay in the premises until the end of the fixed term you can apply to the Tribunal to end the agreement early. You can ask for an urgent hearing but will need to keep paying the rent.

You will need to satisfy the Tribunal that special circumstances exist which were not in place when you first moved in and that your hardship is severe or serious. If the Tribunal agrees that your tenancy can end early it may order you to compensate the landlord for lost rent and other losses.

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

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Paying water charges

Information for tenants

Your landlord can only ask you to pay water usage charges if all the minimum criteria have been met.

Minimum criteria

The minimum criteria for passing on water usage charges is:

- 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 only considered water efficient if it meets these standards.

Water efficiency devices	Minimum 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.

The landlord does 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

It is important to note the presence of the water efficiency measures on the condition report for the premises.

If you are unsure if the taps and showerheads in your property meet the required standards ask the landlord or agent to provide some evidence. You could carry also 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.

Charges limited to water usage

You are only responsible to pay water usage charges. A water usage charge is based on the volume of water supplied to the residential premise.

Water can be supplied to the premise in different ways depending on which services are available to the area. For example, some areas may also supply water that is recycled. If this is the case, you will be responsible to pay any usage charges.

Some local water supply authorities may also provide a breakdown of the water usage component on your bill which may separately itemise water usage and sewerage usage charges. The total water usage charge is the same as if there were no separately itemised usage charges, which you will be responsible to pay.

Other costs (fixed) on the water bill such as water service or sewerage services are payable by the landlord. These costs are charged regardless of whether the property is occupied or not and you cannot be asked to pay them.

The landlord or agent cannot charge you an administration fee for passing on the bill, late fees or other additional amounts.

Time to pay

You only have to pay if the landlord or agent gives you a copy of the part of the water bill setting out the water usage charges payable, or some other evidence showing how your usage was calculated, within **3 months** of getting the bill. You must be given 21 days to pay the amount owing. So long as they request your payment within the 3 months, if you don't pay they can still take action to recover the money later on (eg. making a claim against your bond or getting an order from the NSW Civil and Administrative Tribunal).

Things to know

Some important points to remember include:

- If you remove or tamper with the water efficiency devices you still have to pay for water usage and you may have to pay to replace them.
- If you think your water bill is too high, it may be helpful to contact your local water provider about average water usage. A large increase in water usage may indicate a water leak on the property. You should let the agent or landlord know as soon as possible.
- 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 ensure you are not paying for another tenant's water usage.
- Social housing tenants may have a different system applied for calculating and paying water usage. Contact Housing NSW for further information.
- These provisions apply to all tenancies, regardless of the terms of any existing leases.
- If you have agreed to pay for water usage, the landlord or agent is not allowed to deduct the charge from rent you have paid; it must be made as a separate payment in addition to the rent.

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TENANTS ADVICE AND ADVOCACY SERVICES

TENANTS RIGHTS FACTSHEET 20

Smoke alarms

As a tenant you have rights under the *Residential Tenancies Act 2010* and Regulation. This factsheet explains the law about smoke alarms in NSW.

Landlords must install smoke alarms

It is a term of every residential tenancy agreement that the landlord will install and maintain smoke alarms according to the standards in the *Environmental Planning and Assessment Regulation 2000*.

Types of buildings and types of alarms

All smoke alarms installed from 1 May 2006 must comply with Australian Standard AS 3786. The power supply and location of smoke alarms depends on the type of building.

Private dwellings

This includes:

- detached houses, terrace houses, town houses and villas
- apartments, units and flats
- caretakers flats and flats above shops
- relocatable homes.

Alarms must be hard-wired to mains electricity supply or battery powered (landlord's choice).

They must be installed on every storey. On storeys with bedrooms, an alarm must be located on or near the ceiling in every corridor associated with a bedroom. The landlord may have to install one or more alarms.

On storeys without bedrooms, a smoke alarm must be installed in the path of travel that people would likely take to evacuate the building.

Boarding houses

Smoke alarms must be hard-wired to mains electricity supply, or powered by a non-removable 10-year long-life battery (landlord's choice).

They must be installed on every storey. On storeys with bedrooms, a smoke alarm must be installed in each bedroom, and in each corridor associated with bedroom.

On storeys without bedrooms, a smoke alarm must be installed in the path of travel that people would likely take to evacuate the building.

There are additional requirements and standards for smoke alarms in large boarding houses ('Class 3' buildings). See the NSW Department of Planning and Infrastructure website (www.planning.nsw.gov.au) for more information.

Old smoke alarms

Smoke alarms installed before 1 May 2006 are not required to comply with Australian Standard AS 3786. However, if the alarm is not located as required by the regulation, the landlord must move it or install a new one.

If an old alarm stops working or is removed, the landlord must replace it with an alarm that complies with the standard.

Interfering with a smoke alarm

It is a term of every residential tenancy agreement that neither the landlord nor the tenant shall interfere with the operation of a smoke alarm without a reasonable excuse.

If a smoke alarm gives 'false alarms' (e.g. triggered by cooking), do not remove the battery or disable it. Contact the landlord/agent and ask that the alarm be moved to a more suitable location or replaced with a different style of alarm.

Replacing batteries

It is a term of every residential tenancy agreement that the tenant is responsible for replacing batteries in any smoke alarms during the tenancy.

NSW Fire and Rescue provides the Smoke Alarm and Battery Replacement service for people over 65 or people with disability who have no-one to assist them. Contact your local fire station for information.

Landlord's access to premises

A landlord/agent/contractor, having given 2 days notice, can enter premises to:

- install smoke alarms
- maintain and repair smoke alarms.

Disputes

You can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order for the landlord to:

- install smoke alarms
- maintain and repair smoke alarms
- stop interfering with the operation of a smoke alarm.

The landlord can also apply to NCAT for an order if you interfere with the operation of a smoke alarm or refuse to change the battery.

Urgent repairs

Repair of replacement of a smoke alarm can be an urgent repair – see Factsheet 06: *Repairs and maintenance*.

Alarms for people with hearing impairment

The smoke alarms required by the regulation issue an audible alarm. Devices such as flashing lights and vibrating pillow pads can be connected to some smoke alarms. Ask your landlord to install a compatible alarm.

Contacts and further information

- Smoke Alarms Help Line: 1300 858 812
- Fire and Rescue NSW: phone 02 9265 2999, www.fire.nsw.gov.au
- Better Hearing Australia – Sydney Branch: www.betterhearingsydney.org.au

January 2014

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW

TENANTS' UNION OF NEW SOUTH WALES

Getting your bond back

Information for tenants

Rental Bonds Online

In July 2015 NSW Fair Trading introduced Rental Bonds Online(RBO), a new service to lodge, manage and refund rental bonds. You can find out more on RBO by visiting the Rental Bonds Online for tenants web page. For more information on making a bond claim using RBO go to our Frequently asked questions for tenants web page.

If you do not owe the landlord or agent money at the end of your tenancy, the bond that you paid at the beginning of your tenancy should be refunded to you in full. However, if the landlord or agent believes you owe them money, they are able to make a claim against your bond.

Refund by agreement

Before you leave and hand back the keys you should contact the agent or landlord to arrange a mutually agreeable time to do the final inspection. This is where you both go over the property to see if there is any damage or anything which needs cleaning. If they raise something that is minor you may be able to deal with it on the spot. The official condition report needs to be completed at this inspection.

If you agree with the agent or landlord on how the bond is to be paid out ask them to fill out and sign a Claim for Refund of Bond Money form and give it to you so you can lodge it with Fair Trading. This way, the bond can be paid out straight away.

Never sign a blank Claim for Refund of Bond Money form. Always make sure the bond refund amounts are filled in before you sign the form.

If you disagree

If you cannot agree with the agent or landlord about how the bond should be paid out, or if you feel that they are taking too long, you can lodge a Claim for Refund of Bond Money form yourself without their signature on it. This will start the ball rolling but the bond will not be released immediately.

Fair Trading will post a notice to the agent or landlord giving them 14 days in which to contest your claim by applying to the NSW Civil and Administrative Tribunal. If they do not apply within the 14 days, the bond will then be paid out as per your claim. If they apply to the Tribunal the bond will be held by Fair Trading until the dispute is settled. The landlord or agent will need to attend a hearing at the Tribunal and present evidence to back up their claim. You will receive a notice from the Tribunal if they apply. You should also attend the hearing and bring evidence to support your claim.

Challenging a landlord's claim

If the landlord or agent lodges a claim first, without your signature, Fair Trading will send you notice giving you 14 days in which to contest the claim. You can contact the agent or landlord and try to get them to change their mind and lodge a new claim form signed by both of you. If that is unsuccessful your only option is to apply to the Tribunal within the 14 days, otherwise the bond will be paid out as per the landlord's claim.

If you lodge a claim with the Tribunal make sure you complete and return the Notice of claim slip to Fair Trading as mentioned in the form. Fair Trading will then hold the bond until the Tribunal makes a decision.

Within 7 days of lodging the claim they must send you copies of the final inspection report, along with any estimates, quotes, invoices or receipts relating to the claim. If they fail to do this you should raise it at the Tribunal hearing. You should also tell the Tribunal if you were not given a reasonable opportunity to be present at

the final inspection, and if you disagree with what was written in the final condition report. You should also show any evidence you have to support your position.

Claim by your landlord

The main reasons a claim may be lodged against your bond are:

- if you still owe any rent or have unpaid water usage bills
- if you broke the lease early and haven't paid the break fee or other compensation payable
- if you didn't hand all the copies of the keys you were given and the locks needed to be changed
- if you caused damage or didn't leave the premises in a reasonably clean condition, compared to the original condition report, apart from normal fair wear and tear.

This is not an exhaustive list. There may be other legitimate reasons for the landlord or agent to make a claim against your bond, such as the cost of disposing of goods you have left behind.

Fair wear and tear

As explained above, you are not responsible for fair wear and tear to the premises. Fair wear and tear means the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance. Such deterioration could be caused by exposure, time or just by ordinary use. You are only liable for negligent, irresponsible or intentional actions that cause damage to the premises. These examples may help to explain the difference.

Fair wear and tear - you are not liable	**Damage - you are liable**
Faded curtains or frayed cords	Missing curtains or torn by the tenant's cat
Furniture indentations and traffic marks on the carpet	Stains or burn marks on the carpet
Scuffed up wooden floors	Badly scratched or gouged wooden floors
Faded, chipped or cracked paint	Unapproved paint job
Worn kitchen bench top	Burns or cuts in bench top
Loose hinges or handles on doors or windows and worn sliding tracks	Broken glass from one of your children hitting a ball through the window
Cracks in the walls from movement	Holes in walls left by tenant removing picture hooks or shelves they had installed
Water stain on carpet from rain through leaking roof or bad plumbing	Water stain on carpet caused by overflowing bath or indoor pot plants

Interest payable

A small amount of interest will be paid to you when you get your bond back. The majority of the income earned from the collective pool of rental bonds is used to fund a range of services that benefit all tenants, such as funding the NSW Civil and Administrative Tribunal and organisations across New South Wales under the Tenants Advice and Advocacy Program.

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