

Ending a tenancy, information for landlords

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

- Giving a termination notice
- Making a bond claim
- Goods left behind by your tenant
- Using tenancy databases
- 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.

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

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Giving a termination notice

Information for landlords

When you want to end the tenancy it is important that you follow the correct procedures. If you don't do this you run the risk of causing an unnecessary delay in getting back possession of your property or having to start the process all over again.

Amount of notice required

If you want the tenant to vacate you must give them a termination notice. The notice must:

- be in writing
- be signed and dated by you or your agent
- be properly addressed to the tenant
- give the day on which the residential tenancy agreement is terminated and by which the tenant is required to vacate
- where appropriate, give the grounds/reason for the notice.

You can write your own notice or use the model termination notice provided by Fair Trading.

The minimum period of notice you can give the tenant to vacate is:

- 14 days - if the tenant is 14 days or more behind with the rent or has committed some other breach of the tenancy agreement
- 30 days - if the fixed term of the agreement is due to end
- 30 days - if the premises have been sold after the fixed term has ended and vacant possession is required by the buyer under the terms of the sale contract
- 90 days - if the fixed term period has expired and no new agreement has been signed.

These notice periods are designed to give tenants reasonable time to find another rental property. If they can find a property sooner they can move out at any time without having to give you any formal notice. Except where notice has been given for the end of the fixed

term, the tenant's responsibility to pay rent ends from the date they hand back possession, not the end of the notice.

There is no minimum notice period required if notice is given on the grounds of:

- the premises being destroyed or wholly or partly uninhabitable
- ceasing to be legally usable as a residence
- being acquired by compulsory process (eg. by the RTA)
- on the death of the sole tenant.

After you issue a notice you can issue another notice on a different ground if necessary. For example, if you issue 90 days notice to terminate a periodic tenancy without a reason, and the tenant then doesn't pay rent for 14 days, you can issue a non-payment of rent notice.

Counting days and other rules

It is important to count the days accurately when working out the termination date for the notice and to add extra days to allow for delivery.

There are specific rules which need to be followed when serving a termination notice or any other notice to your tenant. Go to the Serving notice page on the Fair Trading website for more information.

Tribunal possession orders

If you give notice and your tenant does not vacate by the due date the only action you can take is to apply to the NSW Civil and Administrative Tribunal for a possession order. You cannot forcibly evict the tenant yourself or take action such as changing the locks or cutting off the water or power supply. Heavy penalties and compensation could be payable if you do.

You need to apply to the Tribunal within 30 days after the date to vacate specified in your termination notice. Whether you obtain a possession order is up to the

Tribunal to decide, based on the evidence you and the tenant present at the hearing. In the case of notice 'without a reason' the Tribunal must make a possession order if the notice was served correctly, unless the tenant can prove it was retaliatory.

If the Tribunal makes an order it will give the tenant a date to move out. If the tenant still does not vacate you will need to obtain a warrant for possession from the Tribunal's Registry and have it enforced by the Local Court Sheriff's Office.

You can apply direct to the Tribunal for a possession order, without giving the tenant notice, in the following circumstances:

- serious damage to the premises or any neighbouring property
- injury to the landlord, agent, employee or one of the tenant's neighbours
- use of the premises by the tenant for illegal purposes such as drug manufacture
- threat, abuse, intimidation or harassment by the tenant
- undue hardship faced by the landlord
- if the tenant has occupied the same premises for 20 years or more.

Making a bond claim

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.

Information on registering as a user is available on the Taking a bond page on the Fair Trading website.

When the tenancy has ended and the tenant owes you money, you can make a claim against the tenant's bond.

Reasons for claiming

The main reasons a claim can be made against the bond are:

- unpaid rent
- the reasonable cost of repairing damage to the premises, beyond fair wear and tear
- unpaid water usage charges, so long as you had requested payment within 3 months of receiving the bill
- any 'break fee' or other charges payable as a result of the tenant breaking the tenancy agreement early
- the reasonable cost of cleaning any part of the premises not left reasonably clean, having regard to how clean the premises were at the start of the tenancy
- the reasonable cost of having the barrel of the locks changed or other security devices replaced, if the tenant has failed to return all keys and security devices they were given.

This is not an exhaustive list. There may be other legitimate reasons for making a claim against the tenant's bond, such as the cost of disposing of goods left behind by the tenant. The claim must relate to a breach of the tenancy agreement by the tenant.

Fair wear and tear

Your tenant is 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. The tenant is 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	Damage
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 wooden floors	Badly scratched or gouged wooden floors
Faded, chipped or cracked paint	Unapproved or poor quality 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 the tenant's 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
Paint worn off wall near light switch	damage to paint caused by removing posters stuck with blu tack or sticky tape

This means, for instance, you can lodge a claim against the bond for the cost of cleaning the carpet if it has been stained or left dirty. You should not lodge a claim if the carpet is clean and unstained, even if the carpet was new or professionally cleaned before the tenant moved in.

Claiming a bond using Rental Bonds Online

Claims for online bonds must be submitted through Rental Bonds Online (RBO). A landlord, agent or tenant can submit a claim for an online bond.

If you submit the claim first, the principal tenant will be sent a 14-day notice of claim by email and SMS. Co-tenants will receive copies of any notifications sent to the principal tenant, but they cannot log on to RBO or do any bond transactions.

The principal tenant can then log on to RBO and view the claim details. If the tenant agrees to the claim, they can log on to RBO and agree for the bond to be refunded.

The bond will then be deposited as per the agreed bond claim. All refund payments are made by direct deposit to bank accounts. It is important that bank account and contact details are kept up-to-date.

If the tenant does not agree with the claim, they are encouraged to discuss this with you. If an agreement cannot be reached, the tenant can opt to dispute the claim by applying to the NSW Civil and Administrative Tribunal (the Tribunal) and notifying Fair Trading of the dispute during the 14-day notice period.

Tenant claiming a bond using Rental Bonds Online

If the tenant submits their claim online first, a notice of claim will be issued to you by email or email and SMS, with a 14-day notice period to respond. In RBO you may choose to:

- agree to the refund or
- tell us that you have lodged an application with the Tribunal, if you are disputing the claim or
- take no action and the bond will be refunded to the tenant after the notice period expires.

If you and the tenant agree to a different deduction amount during the notice period, Fair Trading will process the new claim on receiving evidence (in RBO) that both you and the tenant have agreed to the new amount.

Claiming a bond using a Claim for Refund of Bond Money form

If you intend to make a claim for all or part of the bond, you will need to fill out a claim form and lodge it with Fair Trading. The form sets out the different ways it can be lodged. Alternatively, call Fair Trading on 13 32 20.

It is best if you can get the tenant to agree with your claim and sign the form as well. That way, the bond can be paid without delay. If this is not possible, you should lodge the form without the tenant's signature as soon as possible with Fair Trading and send evidence of the claim to the tenant.

Fair Trading will send a notice to the tenant giving them 14 days to either settle the matter with you or contest your claim by applying to the Tribunal. That is why it is important that the claim form includes the tenant's forwarding address (if known) or other contact details. If the tenant does not apply to the Tribunal, the bond will 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. You will then need to attend a hearing at the Tribunal and present evidence to back up your claim.

If the tenant lodges a claim for a refund first without your signature, Fair Trading will send you a notice advising of

the claim. You can either try to resolve it with the tenant or apply to the Tribunal within 14 days if you disagree. Make sure to notify Fair Trading that you have applied to the Tribunal, so that the bond can be held until after the hearing.

If you and the tenant reach a different agreement after one of you has lodged a claim, then a new claim form will need to be lodged with Fair Trading with both of your signatures. Otherwise, the first claim lodged will be paid out after 14 days.

Once the bond has been paid out, either you or the tenant can still apply to the Tribunal. There is a 6 month time limit to do this.

Providing evidence to the tenant

If you lodge a claim relating to the condition of the premises without the tenant's signature, you must send copies of the following to the tenant within 7 days:

- the final condition report, and
- estimates, quotes, invoices or receipts for the work.

Send the documents to their forwarding address (if known) or the rented premises address. Copies of these documents also need to be sent to Housing NSW if that Department paid all or part of the bond. Failure to provide these documents within the time period required can lead to penalties being imposed, if you do not have a reasonable excuse.

Note: Do not send these documents or anything else, except the claim form, to Fair Trading.

Goods left behind by your tenant

Information for landlords

Tenants are responsible for ensuring that all of their belongings are removed from the premises at the end of the tenancy. However, from time to time, tenants leave things behind for various reasons. It may be a genuine oversight or a deliberate or unavoidable act by the tenant. Regardless of the circumstances, landlords and agents must follow the correct process when goods have been left behind.

Tenancy must have ended

Before you take any action you must be certain the tenancy has ended. This is particularly important if you or the tenant have not given notice to end the agreement. The premises may look abandoned but the tenant may have gone on holiday, away for work, or be in hospital. Check with the neighbours, the tenant's workplace or try contacting their mobile phone or email address if you have those details. If you have doubts about whether the premises have been abandoned, you can apply to the NSW Civil and Administrative Tribunal. If no doubt exists, you do not need a Tribunal order. You can simply change the locks to secure the premises and deal with any goods that have been left behind.

Rubbish and perishable items

You can dispose of any rubbish or perishable items left behind by the tenant immediately. For example, a broken chair and a pile of old newspapers, perishable food left in a cupboard or dying pot plants in the yard. You do not have to notify the tenant or get their consent to dispose of such items. However, you must be reasonably sure that what you are disposing of is in fact rubbish. If you have any doubts it is advisable to treat the items as goods of value.

Notice required

If items other than rubbish have been left behind you have to attempt to notify the former tenant. You need to try to tell them that you have their goods and they will be

disposed of after a certain time if they are not collected. This can be done in writing (mailed to a forwarding address if known or to the property in case the tenant is having their mail redirected), in person or over the telephone. If after 2 days you have not been able to contact the former tenant you can leave a notice in a prominent position somewhere on the premises (e.g. stuck to the front door). If the goods are obviously leased you should also contact the rental company.

Storage of goods

Goods of value could include such things as furniture, electrical items and clothing. If these goods have been left behind by your tenant they need to be stored in a safe place. This could be either on the premises or somewhere else. Goods of value need to be kept for at least 14 days from the day you notify the tenant to come and collect them.

Personal documents

Different rules are in place when dealing with personal documents left behind by a tenant. Personal documents are defined under the Act as being:

- a birth certificate, passport or other identity document
- bank books or other financial statements or documents
- photographs and other personal memorabilia (e.g. medals and trophies)
- licences or other documents conferring authorities, rights or qualifications.

Personal documents left behind by a tenant need to be kept in a safe place for at least 90 days from the day you give notice to the tenant. This longer period recognises the importance or sentimental value of such items.

Tenant reclaiming goods

The former tenant, or anybody else with a legal interest in the goods (e.g. the tenant's ex-housemate or a goods

hire company) can reclaim the goods at any time they remain in your possession. A suitable time and day for collection needs to be agreed upon. You cannot refuse to return the belongings, even if the former tenant owes rent or money for some other reason.

Generally, goods left behind can be reclaimed free of charge. However, you can charge an 'occupation fee' to the person claiming the goods if enough goods were left to prevent you from renting the premises. An occupation fee (equal to a day's rent) can be charged for each day the goods are held, whether they are stored on the premises or elsewhere, up to maximum of 14 days, even if you choose to hold the goods for longer.

Disposal of unclaimed items

If the former tenant fails to reclaim the goods within the 14 days you can choose to:

- donate the goods to charity (e.g. leave clothes in a clothing bin or arrange for furniture etc to be collected), or
- dispose of the goods in a lawful manner (e.g. take them to the tip or organise a council collection if such a service is available in your area), or
- keep the goods in the property if they are useful fixtures and fittings (e.g. curtains), or
- sell the goods for fair value and give the proceeds to the tenant (less the occupation fee and reasonable costs of the sale) or send it to the Office of State Revenue after 6 years as unclaimed money.

Unclaimed personal documents can be disposed of after the 90 days in an appropriate manner, such as by returning to the issuing authority (wherever possible) or by shredding.

If you have followed the law correctly, you are protected if the tenant comes back to you later about the goods. However, if the law was not followed you could be ordered by the Tribunal to pay compensation to the tenant. This could include any damage to the items while they were in your possession.

Tribunal orders

You can apply for an order from the Tribunal as to what to do with the goods if the tenant abandons the premises or dies. However, this may take a few weeks and the Tribunal may tell you just to follow the same process set out above. You can apply for an order if there is a dispute about payment of the occupation fee.

Using tenancy databases

A guide for landlords and agents of rental properties

Tenancy databases are a legitimate business tool which, if used correctly, help to decide a tenant's suitability when assessing tenancy applications. The *Residential Tenancies Act 2010* sets out who, when, and why a person can be listed. The NSW Civil and Administrative Tribunal can resolve disagreements over proposed and existing listings.

What is a tenancy database?

Tenancy databases are run by private companies, not by the Government or the Tribunal. They collect and hold information about tenants and can only be used by members (mostly agents) who pay membership fees. Members can list tenants on the database for certain reasons and can check the database to see if a prospective tenant has been listed by another member. There are a number of tenancy databases which operate in NSW, including TICA, National Tenancy Database and Trading Reference Australia. Tenancy databases are sometimes referred to as 'blacklists' or 'bad tenant databases'.

Files kept by an individual landlord or agency for internal use (hard copy or computerised) are not databases for the purposes of the legislation.

Listings - who

Only tenants named on the tenancy agreement can be listed on a tenancy database. Approved or unapproved occupants, visitors or children cannot be listed. This is because only the named tenant or tenants are accountable for the premises and have obligations under the tenancy agreement.

Listings - when

Tenants can only be listed on a database after the tenancy agreement has ended. You cannot list a tenant simply because they fall behind with the rent, are served a termination notice or are not looking after the property in a satisfactory way.

Listings - why

Listings can only be made for one, or both, of these reasons:

1. The tenant has vacated owing an amount more than the rental bond for a breach of the tenancy agreement, and the amount is still outstanding at the time of listing
2. The Tribunal has made an order terminating the tenancy agreement because of something the tenant has done wrong and the tenancy has ended.

A tenant cannot be listed on a tenancy database for any other reasons apart from those above. Listing on a database can seriously impact on a person's ability to rent a property in the future, so care should be exercised before taking such a step.

Any information recorded on a database must identify the reason for the listing in an accurate, complete and unambiguous way. For example, 'eviction order given on grounds of rent arrears, tenant owes \$500 in rent above the bond'.

Notice if listing found

If, when checking a prospective tenant on a database, you find out they have been listed by another person you are required to advise them in writing within 7 days. This should include the contact details of who has listed them and how they can go about checking what the listing says and having it removed or amended (if need be). You do not have to advise the person of the reason for the listing. They can get this information from either the person who listed them (free of charge) or direct from the database operator in writing or by phone.

Notice required before listing

You must not list or arrange for a tenant to be listed on a tenancy database unless you have advised the tenant in writing and given details of the proposed listing, or taken

reasonable steps to try to advise them. This would involve sending a letter to the tenant's forwarding address (if known) or to the address of the rented premises (in case they are having their mail redirected). You must give them at least 14 days to object before you list them.

You should also be aware that under the national privacy principles tenants must give their consent before you can check their rental history or pass on information for 'secondary purposes' such as database listings. Such consent authorisation could be included on your tenancy application form.

Removing or updating listings

All listings older than 3 years must be removed from a database. Listings under 3 years must also be removed if they are 'out-of-date'. This is where the amount owed above the bond has been repaid to the landlord within 3 months or if the termination order obtained from the Tribunal was not enforced.

Listings need to be amended if you discover that the information is inaccurate, incomplete or ambiguous. For example, if the listing just says the tenant was evicted but does not identify the nature of the breach.

Any changes to the database records need to be done within 7 days, if you can do it yourself, or within 14 days if you need to notify the database operator to have it done. The new laws apply to all existing listings as well as future listings. All existing listings need to be reviewed to ensure they comply with the new laws, by 1 May 2011.

Disputes about listings

A tenant who believes that a listing, or proposed listing, about them is incorrect, out-of-date or unjust can apply to the Tribunal if they cannot get it removed or amended.

Examples of listings that may be unjust include:

- a tenant who left the property to escape domestic violence and their former partner was responsible for damage after they left
- a tenant who was in hospital after a car accident and fell behind with their rent.

The Tribunal can order information about a person in a database to be wholly or partly removed, amended in a certain way or not listed at all if it was a proposed listing. Be mindful that the Tribunal also has the ability to award compensation if a person suffers a loss as a result of inaccurate, ambiguous or out-of-date information being listed about them.

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.