

Renting laws are changing

The *Residential Tenancies Act 2010* was passed by Parliament in June 2010. The Act and its associated Regulation will commence on **31 January 2011**. Until then, the existing laws continue to apply.

Main objectives

The Act aims to:

- fairly balance the rights and obligations of tenants and landlords
- modernise and update the law in line with current practices
- reduce the level of disputes, by providing greater clarity and certainty in the legislation.

NSW Fair Trading has examined the tenancy laws in place in other States and Territories to identify best practice approaches that have been successful elsewhere, and these have been adopted in the Act in a range of different areas.

Key changes

The new laws will deliver important protection for tenants and landlords when they commence on 31 January 2011. Some of the key improvements are as follows.

Tenants get more time to move out

If a tenant is no longer under a fixed term agreement and the landlord wants the tenant to move out 'without grounds', the notice period increases from 60 to 90 days. If notice is given by a landlord just before the end of the lease, the notice period increases from 14 to 30 days.

Certainty for landlords

If a tenant no longer on a lease does not move out after being given a 'no grounds' notice to vacate, the Consumer, Trader and Tenancy Tribunal must terminate the agreement and return possession of the property to the landlord. The only exception to this is if the tenant can show that the notice was retaliatory.

Mechanism to save tenancies

If a tenant catches up on overdue rent, or follows a repayment plan agreed with the landlord, termination

action will be cancelled. This will not apply if the tenant is shown to have frequently failed to pay their rent on time.

Faster rent arrears eviction process

Landlords will be able to cut 2 weeks from the eviction process by applying to the Tribunal for orders at the same time as giving a termination notice to the tenant.

Alterations

A tenant will still need their landlord's written approval if they want to make a minor change to the premises, such as installing child safety locks on windows. Landlords will need to be reasonable, but will be able to say no if the tenant wants to paint the premises, make structural changes or do something that would be difficult to remove.

Rental bonds

The maximum amount of rental bond that can be charged will be 4 weeks rent, regardless of whether or not the place is furnished. Landlords will not be allowed to request or receive any bond 'top-ups' during the course of a tenancy. The time period for landlords and agents to lodge bonds has been extended.

New process for goods left behind

Procedures for landlords and agents dealing with goods left behind when a tenant vacates have been streamlined. Rubbish and perishable items will be able to be disposed of immediately.

Fee-free rent payments

Under the new law, every tenant must be given at least one fee-free way to pay their rent. At the same time, tenants will be required to pay the landlord's costs if a cheque for rent bounces or if a direct debit payment is dishonoured.

Water efficiency

Rented premises must be water efficient if tenants of separately metered premises are to pay for water usage.

Letterbox service of notices

There will be an additional option for serving notices – by hand delivery to a person's letterbox.

Holding fees

Holding fees will only be able to be charged once a tenancy application has been approved. If the tenant pulls out after paying a holding fee they will lose the whole fee rather than a pro-rata amount.

Improved disclosure

Before a lease is signed, prospective tenants will be required to be told certain things, such as if the landlord has drawn up a contract to sell the property or if a bank or other lender has started court action to recover possession of the premises.

Optional lease 'break fee'

Landlords will have the option of including a fixed penalty in the lease (a break fee), in the event that a tenant breaks a lease before the end of the fixed term period. Where there is no such penalty in the lease, the tenant will still be liable to compensate the landlord for any loss.

Additional grounds for eviction

Landlords will be able to apply to the Tribunal to end a tenancy if the tenant uses the premises for an illegal purpose or if they threaten, abuse, intimidate or harass the landlord or agent.

Breaking a lease early

Tenants will be able to end a fixed-term lease in certain situations, such as when they accept an offer of public housing or need to move to a nursing home.

Sale of rented premises

Selling agents must make reasonable efforts to agree with tenants on the days and times the premises will be available for inspection. Two inspection periods each week will be allowed, and the parties can negotiate if more access is required.

Sub-letting

If a tenant wants to sub-let part of the premises or bring in an extra co-tenant, they will still need the landlord's written approval first and landlords will need to be reasonable when considering such requests. It

will be reasonable to refuse if the person is listed on a tenancy database or if an extra person would result in overcrowding.

Rights of co-tenants

Some disputes between co-tenants in shared households will be able to be taken to the Tribunal. Once a fixed-term lease ends, a co-tenant can give 21 days notice to end their contract with the landlord. This will bring an end to their liability for future rent, damage etc.

Domestic violence

Victims of domestic violence living in a rented property will have the right to change the locks and seek to take over the tenancy if their name is not already on the lease.

Background to these reforms

NSW tenancy laws have remained largely unchanged since they were first introduced more than 20 years ago. Commencing in 2005, the Government began a comprehensive review of the existing tenancy laws and during three rounds of public consultation, more than 2000 submissions were received from tenants, landlords, agents, and key interest groups. These ideas and opinions have helped shape the Act.

Subscribe to The Letterbox

The Letterbox is a free, tenancy e-newsletter providing subscribers with regular email bulletins containing case studies and other information to help landlords, agents, tenants and anyone interested in tenancy, better understand the operation of the *Residential Tenancies Act 2010*.

Go to the Fair Trading website to subscribe and expect to start receiving *The Letterbox* after the new laws commence.