RIGHTS & OBLIGATIONS OF TENANTS IN NEW SOUTH WALES

Residential Rental agreement

In order to create a tenancy, the law requires a landlord and tenant to enter into a written agreement. The *Residential Tenancies Regulations* 1995 provides a standard form for tenancies less than three years, which must be used in order to create a residential rental agreement.

What the Agreement Must Contain

The Agreement is required to contain two parts:

- Part 1: Sets out the terms of the agreement
- Part 2: Contains the condition report in respect of the premises to be rented.

A copy of this form can be obtained at:
www.austlii.edu.au/au/legis/nsw/consol_reg/rtpr1995499/sch1.html.

Additional Terms

A landlord and tenant may agree to include terms which are additional to those found in the standard agreement. However, no agreement can take away or expand on rights which are found in the Residential Tenancies Act. This means that even where a tenant agrees to an additional term, it will not be legally binding if it conflicts with the Act.

Before a Tenant Signs a Rental agreement

Before a tenant signs a rental agreement or moves into the premises, they must be given by the landlord or agent:

1. A copy of the proposed rental agreement and condition report.
2. A written statement as to any costs which the tenant will have to pay upon entering into the rental agreement.
3. A copy of "*The Renting Guide: A guide for landlords and tenants*".

The landlord or agent must allow sufficient time for the tenant to read the agreement. It is important to use this time so that all rights and obligations under the agreement are understood.

Costs for Preparation of an Agreement

Where a landlord prepares a residential leasing agreement, they are entitled to ask the tenant pay half of the preparation costs. However, the landlord must give written notice to the tenant of their obligation to pay, and the amount required must not exceed $15 for a lease with a term which is less than three years.

Continuation past the Expiry Date of an Agreement

The length of a tenancy is determined by the rental agreement. Where the agreement period ends and another agreement is not entered into, the tenancy relationship continues to be governed by the terms and conditions of the current agreement. However, the termination procedures are different to when an agreement is still operative (see below at Termination).

The Condition Report

The condition report is a document filled out by the landlord stating the condition of the premises before the tenant moves in. The tenant is required to review this form and agree, or disagree, with the landlords assessment. At the end of a tenancy, if there is any damage to the property which did not exist at the time the property was leased, the tenant may be required to pay for that damage from their bond. As such, the condition report is a very important document which should be detailed and accurate to avoid disputes when the tenancy comes to an end.

How to Complete a Condition Report

1. The landlord or agent fills out a condition report in triplicate. Here the landlord identifies any problems with the premises.
2. The landlord (or agent) keeps one of these copies, and gives the tenant the remaining two copies to complete.
3. One of these copies should be given back to the landlord and the other should be kept by the tenant.
4. At the end of the tenancy, the condition of the premises is assessed against the copies produced by the landlord and tenant. Although this does not have to be completed in the presence of the other party, it is advisable to do so.

Example of Condition Report

Condition of premises at start of tenancy

	Clean	Undamaged	Working	Tenant agrees	Comments
ENTRANCE					
walls/ceiling	Y	Y		N	crack in wall over door
doors/ windows/ screens	Y	N		Y	window screen torn

The tenant must ensure that they clearly indicate whether they agree with the condition report completed by the landlord, and include comments where there is disagreement or damage which the landlord has not identified.

Landlord's Promise to Undertake Work

The landlord may promise in the condition report to undertake cleaning, repairs or additions to the property. If such a promise is made, it is essential to have the details of the work to be completed at the end of the condition report, including the date that the work is to be finished by.

Reservation Fees

A reservation fee is the payment of money to a landlord or agent in order to reserve a premises whilst an application is being considered and a residential agreement drawn up. A reservation fee does not guarantee that a tenancy will be granted. A landlord or agent is only permitted to take such a fee from one potential tenant at a time. The rules for taking a reservation fee are strict and include:

1. The fee must not exceed one weeks rent.
2. A receipt must be given by the landlord or agent.
3. The receiver of the money must provide the potential tenant with a written statement detailing that:
    a. The premises will not be let to someone else whilst they have the fee;
    b. Should the agreement not go ahead, a full refund will be given;
    c. If a rental agreement is entered into, the fee will form the first week of rent.

If the prospective tenant chooses to withdraw their reservation, the landlord is entitled to retain the amount equal to the rent that would have been paid during the period of time that the premises were reserved.

Bond

A rental bond is an amount of money paid by a tenant to a landlord or agent which acts as a form of security for the landlord against breach of the rental agreement by the tenant. Rental bond is covered by the *Landlord and Tenancies(Rental Bonds) Act* 1997, which can be accessed at:
www.austlii.edu.au/au/legis/nsw/consol_act/latba1977290/.

The Amount Payable as Rental Bond

The bond payable is to be included in the rental agreement and cannot exceed:

- Four weeks rent for unfurnished premises;
- Six weeks rent for fully furnished premises;
- Unlimited bond where premises are furnished and the rent exceeds $250 per week.

What happens with a Bond?

The landlord must deposit the bond paid by a tenant with the Rental Bond Board, which is managed by the Office of Fair Trading. The bond must be lodged within 7 days of receipt of the money, or within 7 days of the lease taking effect, which ever is the later date. The landlord is also required to give the tenant a receipt for payment of a bond.

Getting a Rental Bond Back

Once the tenancy has been terminated, and a final assessment of the condition of the premises completed, a claim form should be filled out by the landlord or agent. If the tenant agrees with the form, the Rental Bond Board will pay the agreed amount of money to the lessee.

Where an application has been lodged without the consent of a tenant (or landlord), the Rental Board must send written notice to the other party, giving them 10 days to apply to the CTTT to dispute the claim. If that party fails to lodge a claim, the bond will be paid out to the party which applied for payment of the rental bond.

Rent

Rent is defined as the amount of money required to be paid under a rental agreement for the duration of the tenancy.

Rent in Advance

A landlord may require a tenant to pay rent in advance for the life of the agreement. The amount of rent in advance required to be paid, cannot exceed:

- Two weeks rent for premises where the weekly rent is $300 or less;
- One month rent for premises where the weekly rent exceeds $300.

Where advance rent has been paid, the tenant cannot be asked to make any further payments until the rent already paid has been used. This means, that where a landlord requires two weeks of advance rent, they cannot require the next two weeks of rent to be paid until the two weeks for which the rent has been paid has lapsed. When the next payment is made, the tenant will have again paid two weeks in advance, covering the next two weeks of rent.

Rent Receipts

Any agent or landlord, who receives payment for rent from a tenant, is required to give that tenant a receipt. The receipt must specify:

1. The name of the person receiving the rent, or on whose behalf the rent is received;
2. The name of the person paying the rent, or on whose behalf the rent is paid;
3. The residential address for which the rent paid;
4. The period for which the rent is paid;
5. The date that the rent is received;
6. The amount of rent paid.

Where the rent has been paid into a bank account that has been nominated by the landlord, there is no requirement that such a receipt be given.

Rent Records

Landlords or their agents are required to keep a record of the rent paid by their tenants. These records are required to be kept for at least 12 months after the rent has been received.

Penalty Rent Terms

Where a rental agreement provides that a tenant will, for breach of contract, be liable for:

- The remainder of the rent to be paid under the agreement,
- Increased rent,
- An amount as a penalty,
- An amount as liquidated damages,

: that part of the agreement will be void and have no application to the rights and obligations of the tenant and landlord.

Rent Increases

Where a person enters into a residential rental agreement for a fixed period, then rent required to be paid cannot be increased unless such an increase is acknowledged in the rental agreement.

Where the agreement is not fixed, the landlord must give the tenant 60 days notice. The notice must specify the increased rent which is required to be paid, along with the date from which the increase is to apply.

The effect of such notice, if properly given, is to alter the rental agreement so that the increased amount is payable from the date identified in the notice.

Applying for an Order that Rent Increase is Excessive

In order to have a rent increase overturned, a tenant may apply to the Consumer, Trade and Tenancy Tribunal (CTTT). A tenant must apply to the tribunal within thirty days of receiving a rent increase notice from their landlord. (See below on how to apply to the CTTT).

In determining whether the increase is excessive, the CTTT will look issues such as:

- The value of the residential property,
- What the landlord is required to pay – such as body corporate fees,
- The value of fittings and services in the premises,
- The state of repair of the premises,
- Anything that the tribunal sees as relevant.

If such an application is successful, the Tribunal may determine the amount of rent to be charged, which the landlord must not exceed.

Landlord's Rights and Obligations

Council and Water Rates and Land Taxes

The landlord is required to pay all rates, charges and taxes which may apply to the premises, except for those expressly agreed to.

Vacant Possession

The law provides that it is a term of every rental agreement, that a tenant is entitled to vacant possession. This means that the landlord must ensure that there is no person or belongings in the premises at the date from which the tenant is entitled to occupy the premises.

Right to Access and Inspections

A landlord is only permitted to access the leased premises during the term of the rental agreement in accordance with the *Residential Tenancies Act*. The right to access is permitted:

- In an emergency where urgent repairs are required;
- To inspect the premises - 7 days notice must be given, and an inspection cannot occur more than 4 times in a twelve month period.
- To carry out necessary repairs where at least 2 days notice has been given.
- To show prospective purchasers, where reasonable notice has been given.
- To show prospective tenants, on a reasonable number of occasions, in the last 14 days of the tenancy.
- Where the landlord believes that the premises has been abandoned.
- At any time with the consent of the tenant.
- With the consent of the CTTT.

Such access is not permitted on public holidays or Sundays, without the written consent of the tenant, outside the hours of 8am to 8pm.

Tenant's Rights and Obligations

Rates and Charges which a Tenant can Agree to Pay

A tenant may agree to pay for water and sewerage charges. In order to be responsible for such costs, the tenant must agree to pay the charges under clause 29 of the residential rental agreement. However, a tenant can only be charged where the premises is metered so that the water usage attributable to the tenant can be determined.

In paying for water rates, the tenant may also be liable for the payment of sewerage charges as determined by the relevant water authority.

Tenant's Right to Quiet Enjoyment

The right to quiet enjoyment means that the landlord, or persons associated with the landlord, cannot not disrupt the tenant's peace, comfort and privacy.

Obligations of Tenant in Using Premises

In using the property, the tenant is required to ensure that:

- the premises is not to be used for illegal purposes;
- the tenant doesn't permit or cause nuisance;
- the tenant will refrain from causing nuisance or interfering with the quiet enjoyment of neighbours.

Liability for the Actions of Others

Where a person is lawfully permitted to be in the premises by the tenant, the tenant is responsible for any act or omission caused by that person.

Obligation of Tenant and Landlord for Cleanliness and Repairs

Tenant's Obligation of Cleanliness and Notification of Damage

There are several obligations placed on the tenant which require them to take care of the premises. These include:

1. Keeping the premises in a reasonable state of cleanliness having regard to the condition of the premises at the beginning of the tenancy;
2. Notifying the landlord of all damage to the premises;
3. Not intentionally causing or permitting damage to the premises;
4. Leaving the premises in the same condition as it was when the tenancy began, having regard to fair wear and tear.

Landlord's Responsibility for Cleanliness and Repairs

Everything that a landlord provides for use by a tenant whilst occupying a premises must:

- Be kept in a reasonable state of cleanliness which is fit to live in;
- Be kept in a reasonable state of repair, which is determined by the age of the premises and the rent payable.

Urgent Repairs

An urgent repair, under the Act is any work needed to repair:

a. A burst water service;
b. A blocked or broken lavatory system;
c. A serious roof leak;
d. A gas leak;
e. A dangerous electrical fault;
f. Flooding or serious flood damage;
g. Serious storm or fire damage;
h. A failure or breakdown of the gas, electricity or water supply to the premises;
i. A failure or breakdown of any essential service on the premises for hot water, cooking, heating or laundering;

j. Any fault or damage that causes the premises to be unsafe or not secure.

Upon giving written notice of an urgent repair carried out by a tenant, a landlord is required to reimburse the tenant up to $500 providing:

- The disrepair was not needed due to a breach of the tenant
- The tenant attempted to contact the landlord about the disrepair
- The landlord was given a reasonable opportunity to make the necessary repairs
- If the landlord nominated a licensed repairer, reasonable attempts were made to contact that person
- The repairs were carried out by a properly licensed person
- The tenant, as soon as possible, provided the landlord with notice of the repair and receipts.

Addition to Premises and Alternation of Locks and Security Devices

Additions and Alternations by a Tenant

Without the permission of a landlord, a tenant is not entitled to:

1. Attach an fixture, or make a renovation or alternation to the premises;
2. Remove any fixture that a tenant attached to the premises. However, if the landlord refuses consent, the tenant is entitled to be compensated for the value of the fixture.

If damage is caused through the removal of a fixture, the tenant must repair the damage or compensate the landlord for fixing the damage.

Even if the proposed alteration or fixture is reasonable, there is no obligation placed on the landlord to consent to any proposed action by a tenant.

Locks and Other Security Devices

The landlord must provide and maintain locks and security in order to ensure that the premises are reasonably secure.

Tenants and landlords are not permitted, without consent to or reasonable excuse:

- to alter, remove or add any other lock or security device.

Where such alternation is made, the other party must be given a copy.

What is a reasonable excuse?

- An emergency
- In accordance with an order from the Tribunal.

Right to Assign or Sublet

A tenant may, with the consent of the landlord, sublet premises to another person. Where a landlord consents to a sublet, they are not permitted to charge for such a right. Where a premises has been sublet, the original lease holder is called the sublessor and the new tenant under the lease is called the sublessee.

Obligations of Sublessee

The sublessee is required to comply with all of the negative obligations under the lease. For example, a sublessee must not damage the property or allow illegal acts to be committed on the premises.

Rights of a Sublessee and Liability of Original Tenant

A sublessee has no rights against the landlord for breach of the rental agreement because the agreement was with the original tenant only. This also means that the landlord cannot take action against the sublessee, apart from evicting him/her. However, where the sublessee causes damage to the property, or breaches the agreement, the landlord may take action against the original tenant for any damage which may have be caused to the landlord. This means that the original tenant must be careful when allowing other persons to use the property as they will be responsible for any problems which may arise.

Landlord's Power to Terminate Sublease

A sublease will be terminated in accordance with the normal rules or termination (see below). However, the sublease will only exist whilst the original tenant is entitled to the property. This means that where the original lease is terminated, the sublease is also terminated, and the sublessee has no right for wrongful termination against the landlord.

Termination of Residential Rental agreements

There are several ways in which a rental agreement can be terminated, the most common of which are:

- The tenant or landlord giving notice of termination
- A decision by the Tribunal
- Abandonment of premises

The Amount of Rent Payable upon Termination

Rent is calculated on a daily basis, therefore, where an agreement is terminated, the tenant is only responsible for the actual days the tenant has retained possession.

Form of Notification

Where the tenancy is terminated by either the tenant or the landlord, the notice given to the other party must:

- Be in writing
- Identify the residential premises
- Be signed and dated by tenant/landlord or agent
- Specify the date that the premises is to be vacant on
- Specify the reason for terminating the agreement – eg. A particular breach by the other party.

Notices of Termination

A notice of termination should not be given during the fixed contract period by either the tenant or the landlord, as doing so may make one party liable for damaged to the other party.

Sale of Premises

Where a fixed contract has ended and a property has been sold requiring the tenant to move out, the landlord must give 30 days written notice. However, the sale of premises does not necessarily require a tenant to move out.

Where a landlord gives notice to a tenant of a new purchaser, including the name of the purchaser and a direction to pay future rents to that purchaser, that purchaser will be regarded as the landlord as at the date the notice is given.

Termination for Breach of Agreement

A notice of termination for breach must give 14 days notice. However, where the breach is for payment of rent, the tenant must be at least 14 days behind in paying rent before the notice is issued.

Termination by Either Party for Without Particular Grounds

After the end of a fixed agreement, each party is entitled to terminate the tenancy without reason. The respective notice periods are:

- Landlords – 60 days
- Tenants – 21 days, unless the landlord consents to an earlier date.

Termination of a Fixed Agreement without Grounds

A tenant and landlord may terminate a fixed agreement without grounds upon giving 14 days notice. However, each party may be subject to a claim for compensation.

In the case of a landlord, they may claim for:

- Lost rental value
- Real estate fees

The extent of compensation that a tenant may need to pay, will be based on the facts, and the actual damage caused by the early termination of the agreement.

Termination of Tenancy by Tribunal

The tribunal may terminate the agreement at any time where:

- The tenant causes serious damage or injury
- The landlord or tenant would suffer undue hardship
- Either party has breached the agreement

Abandoned Premises and Goods

A premises may be declared as abandoned where a landlord applies to the tribunal for such an order. Where such an order has been made, the landlord may claim:

- Compensation for any loss caused from the abandonment;
- An order that the landlord be entitled to dispose of or sell any goods which remain in the abandoned premises, including an order as to who is entitled to the proceeds of any sale.

If however, the premises were not abandoned, but goods remained in the premises, the tenant may apply to the tribunal for the items to be delivered into the possession of the tenant.

For more information and/or free advice:
Illawarra Tenants Service
(A service of the Illawarra Legal Centre)
Advice Line (02) 42 743475
www.illawarralegalcentre.org.au/tenants_service.html
7 Greene Street
Warrawong NSW 2502

Taking a Dispute to the Consumer and Tenancy Tribunal

The CTTT has jurisdiction to make decisions about disputes which may arise between a tenant and landlord over any right or obligation contained in the rental agreement. Such disputes include:

- Rent
- Bond
- Reservation Fees
- Right to quiet enjoyment
- Terminating the rental agreement
- Repairing the premises
- Breach of the agreement

Lodging an Application

An application form must be completed, and lodged at a Registry. The cost of lodging an application is $29, or $5 for full-time students receiving financial assistance from the government.

Wollongong's Registry is located at:
Level 3, 43 Burelli St
Wollongong 2520
PO Box 319
Wollongong 2520
DX 27842 Wollongong
Fax: 4220 5455

An application form can be downloaded and lodged online at:
http://www.fairtrading.nsw.gov.au/corporate/cttt/applicationforms.html

Conciliation

Although conciliation is not mandatory, the Tribunal encourages parties to sit down and negotiate before proceeding to a hearing before the Tribunal. The negotiations are facilitated by an impartial third person who checks all necessary documentation, helps

determine the issues to a dispute and assists in the generation of solutions. Where an agreement is made between parties, the agreed terms become the order of the Tribunal.

Where a resolution is not reached, the matter will go before the Tribunal, where nothing said in conciliation may be repeated.

The Hearing

The Tribunal aims to keep hearings informal; however, it will require parties to present evidence to back up any claims, which may include asking questions of each other and bringing witnesses to the hearing. The Tribunal will make a decision based on this evidence.

Where the Tribunal makes a decision, it is an offence not to comply with that order where it relates to non-money decisions. If a money order is not voluntarily complied with, the order from the Tribunal must be taken to the Local Court for the order to be enforced. Any costs associated with such an action may be added to the total amount payable by the other party.

The CTTT can be reached at:

- 1300 135 399
- www.cttt.nsw.gov.au

Rights & Obligations of Tenants in New South Wales

Summary

The Relevant Legislation

The legislation which covers written and partly oral rental agreements in NSW is the *Residential Tenancies Act* 1987. The Act came into operation in 1989 and outlines the legal rights and responsibilities of the landlord and tenant for residential rental agreements. A copy of this Act may be obtained at www.legislation.nsw.gov.au.

Residential Tenancy Agreement

A residential tenancy agreement – or rental agreement – is the contract which governs the relationship between the tenant and the landlord. The *Residential Tenancies Regulations* 1995 contains a standard form which is to be used by the landlord or agent to create the rental agreement.

The Condition Report

The Condition Report is part of the formal rental agreement which details the condition of the premises before the tenant moves into the premises. It is essential that the condition of the premises be accurately described in the report in order to avoid having to pay for damage which may have been pre-existing at the conclusion of the tenancy.

Reservation Fee

A potential tenant may give a landlord a reservation fee in order to ensure that no one else is given the property whilst the tenant's application is being determined. This fee cannot be greater than one week's rent and does not guarantee that the applicant will get the property. This fee is generally not refundable.

Bond

A bond is an amount of money paid in advance of moving in, as a form of security for the landlord for any breach of agreement of damage to the premises, which may be caused by the tenant. The money is payable to an independent body, and refundable upon on the termination of the tenancy.

Rent

Rent is the amount of money that a tenant pays for exclusive use of the premises, which the landlord may require the tenant to pay in advance. The landlord must ensure they keep a record of all rent paid, and issue a receipt where necessary.

Where a landlord unreasonably increases rent, a tenant may be able to take the matter to the Consumer Trade and Tenancy Tribunal for review.

Landlord's Rights and Obligations

The landlord is responsible for paying all rates and taxes on the land, unless otherwise agreed. The landlord is entitled to access the property, however, sufficient notice must be given to the tenant before the property is accessed.

Tenant's Rights and Obligations

A tenant has the right to peaceful enjoyment of the property, but is also responsible for ensuring that the property is used appropriately and not damaged.

Obligation of Tenant and Landlord for Cleanliness and Repairs

Both the tenant and landlord must ensure that the premises are kept in a reasonable state of cleanliness, which is fit for habitation. The landlord must fix all repairs, and compensate the tenant where they have had to pay for urgent repairs.

Addition to Premises and Alternation of Locks and Security Devices

A rental premises cannot be altered by the tenant without permission from the landlord. This limitation applies to locks and security devices, which may only be added without permission in an emergency. Any damage caused by an alternation or addition must be paid for by the tenant.

Right to Assign or Sublet

Under most residential rental agreements, a tenant can allow another person who is not on the lease to also live in the premises, or take over paying the lease, with the permission of the landlord. The person to whom the sublease is given, the sublessee, is

subject to the same obligations as a tenant, but does not gain any rights enforceable against the landlord.

Ending a Residential Rental Agreement

A rental agreement may be terminated in several ways. Notice may be given by either the landlord or tenant once the original term of the lease has expired. However, a rental agreement may also be terminated where the agreement is breached, the property is sold or the tribunal makes an order for the termination of the lease.

Taking a Dispute to the Consumer and Tenancy Tribunal

Either a tenant or a landlord may take a dispute before the CTTT where the dispute relates to an issue covered by the rental agreement. The CTTT encourages parties to conciliate, but where that fails, the dispute will proceed to a hearing where the CTTT will determine the outcome of the dispute.

NB: CTTT – Consumer Trade and Tenancy Tribunal