

This article discusses residential tenancy agreements, which ensure transparency and clarity of terms between landlord and tenant, and are enforceable in law. New residential tenancy laws began from 23 March 2020 pursuant to amendments to the [Residential Tenancies Act 2010 \(NSW\)](#) and the implementation of the new [Residential Tenancies Regulation 2019 \(NSW\)](#).



A. WHAT IS A RESIDENTIAL TENANCY AGREEMENT?

For landlords and tenants, a residential tenancy agreement is an effective way of setting out the standard terms that are to govern each party's rights and obligations. According to section 13 of the *Residential Tenancies Act 2010* (NSW) ("the Act"), a residential tenancy agreement involves a person (landlord) who grants another person (tenant) a right of occupation of residential premises. The agreement does not necessarily need to be a formal written contract and can be orally expressed or implied.

Under section 14 of the Act, the responsibility is on the landlord to ensure the existence of a residential tenancy agreement when accepting new tenants. A standard form is prescribed according to the *Residential Tenancies Regulation 2010* by NSW Fair Trading, which is easy to use and readily accessible to everyone. This form, amounting to a residential tenancy agreement, outlines important details such as the personal information of the landlord(s), tenant(s), and the conditions of the tenancy including the period of term and payment of rent.

The standard form provided by NSW Fair Trading can be accessed here (new version from 23 March 2020): https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0007/608380/Standard-Residential-Tenancy-Agreement.pdf.

A.1. FIXED TERM OR PERIODIC

Residential leases can be for a set period or ongoing, and this is also indicated in the residential tenancy agreement. A **fixed term** agreement means that the lease will only last for a certain period (for example, 6 months or 12 months), and a date of termination is specified.

However, the lease continues on the same terms of a

periodic agreement even after the specified date of termination, unless it is ended by the landlord or tenant by giving a written notice of termination. A **periodic** agreement means that the tenancy will last indefinitely, without a set ending date.

A.2. CLAUSES IN A RESIDENTIAL TENANCY AGREEMENT

Residential tenancy agreements also include additional terms whereby:

- Tenants agree to pay rent on time and landlords are to provide receipts for payment and keep records (clauses 3-4);
- A written notice must be provided 60 days in advance by the landlord to the tenant for any increases in rent, and increased rent is in accordance with the Act (clauses 5-6);
- Rent may be reduced upon agreement by the landlord and the tenant (clause 7);
- The landlord pays for the installation costs of electricity, water, gas, or oil supply services and the tenant pays the charges for the supply of these services (clauses 9-10);
- The tenant has a right to quiet enjoyment of the leased premises (clause 14);
- The tenant is under an obligation to use the premises appropriately and to keep it reasonably clean without damage, while the landlord is obligated to ensure the premises are fit to live in and reasonably repaired (clauses 15-18); and



- For sale of premises, a landlord must give written notice to the tenant 14 days in advance (clause 20).

Further optional terms may be added upon the discretion of the landlord and tenant.

A landlord must also provide tenants with the New Tenant Checklist, which outlines and provides proof of acknowledgement of the details of the lease. The Checklist is available here: http://www.fairtrading.nsw.gov.au/Factsheet_print/Tenants_and_home_owners/Renting_a_home/FTR72_New_tenant_checklist.pdf.

B. TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

B.1. TERMINATION OF NOTICES

If a residential tenancy agreement indicates the lease is for a fixed term, the lease can be ended by the landlord or tenant providing written notice before the termination date. If it is the landlord who provides the notice, it must be given 30 days in advance; a tenant must provide 14 days' notice.

Similarly, to terminate a periodic agreement, written notice must be given by the landlord or tenant. A landlord must provide at least 90 days' notice, and a tenant must give 21 days' notice.

In accordance with section 82 of the Act, a termination notice must specify the address of the residential premises, the date of termination, and must be signed by the landlord or tenant who is giving the notice or their agent.

B.2. REASONS FOR TERMINATION

Beyond the ending of a fixed term agreement, termination of an agreement may occur for various other reasons which are addressed in the Act, including:

- Where a person with a superior title to the landlord (such as a head landlord) or a mortgagee becomes entitled to the residential premises (section 81(4));
- When a landlord enters into a Contract to sell the residential premises which requires vacant possession of the land (section 86);
- If the landlord or tenant breaches the residential tenancy agreement (sections 87, 98 and 103);
- If a tenant seriously damages the premises or neighbouring property (section 90); and
- Where the premises are being used by the tenant or

anyone else occupying the premises for illegal purposes, such as for the manufacture or sale of prohibited drugs (section 91).

An agreement also ends upon the death of a tenant, or if the premises become destroyed or uninhabitable (sections 108 and 109).

C. ENFORCEMENT OF RESIDENTIAL TENANCY AGREEMENTS

C.1. NSW CIVIL AND ADMINISTRATIVE TRIBUNAL (NCAT)

Since residential tenancy agreements are enforceable in law through the Act, any breaches or disputes regarding the agreement can be heard by NCAT.

For many of the above reasons for termination, a landlord or tenant may wish to bring the dispute to NCAT to obtain a termination order. This is a legal order which terminates the residential tenancy agreement and allows possession of the residential premises.

For example, a landlord may apply for a termination order to end the lease with NCAT because a tenant has caused serious damage to the leased premises. The residential tenancy agreement between the landlord and tenant will be terminated, and the tenant will have to vacate the premises.

C.2. NSW FAIR TRADING

A tenant can also bring complaints to NSW Fair Trading. A Fair Trading officer will address the complaint and assist tenants and landlords with reaching a mutual agreement, or even offer formal mediation services.

Fair Trading can address complaints regarding situations where a landlord charges extra before entering an agreement, withholds material facts or makes misleading statements before entering an agreement, adds prohibited terms to an agreement, or asks for a bond exceeding 4 weeks' worth of rent.

Unlike NCAT, Fair Trading cannot enforce orders.

D. CHANGES TO THE LAWS FROM 23 MARCH 2020

New laws taking place from 23 March 2020 have made some important changes to the existing law. The major changes include the following.

D.1. BREAK FEE

There are now mandatory break fees to be paid to the landlord if you end a fixed term agreement earlier than the termination date, and the agreement was for three years or less.



The set fees are as follows:

- Four weeks' rent if less than 25% of the agreement period has expired;
- Three weeks' rent if 25%-50% of the agreement period has expired;
- Two weeks' rent if 50-75% of the agreement period has expired; or
- One week's rent if 75% or more of the agreement period has expired.¹

Tenants are not obligated to pay a break fee if the tenancy agreement ended early due to any reason allowed under the Act (listed in B.2. above).

D.2. CONDITION REPORT

It is a requirement that the landlord or agent give a tenant a completed Condition Report before an agreement is signed.²

The standard Condition Report has been updated to incorporate the new laws including requirements for smoke alarms, available [here](#). A penalty has also been introduced for landlords or agents that fail to provide a Condition Report to a new tenant. Tenants are required to complete and return the Condition Report to the landlord or agent within seven days of receipt.

D.3. MANDATORY DISCLOSURES

Under the new laws, the landlord or their agent are required to disclose additional facts, such as if the property:³

- Has been subject to flooding or bushfires in the past five years;
- Has significant health or safety risks to people;

- Has been the scene of a serious violent crime in the past five years;
- Is listed on the asbestos insulation register;
- Was used for the manufacture or cultivation of a prohibited drug or plan in the past two years; and/or
- Is part of a building with a fire safety / building product rectification order, or an application for rectification has been lodged in relation to external combustible cladding.

D.4. SMOKE ALARM OBLIGATIONS

There are now stricter requirements for smoke alarms within buildings. A landlord is required to repair or replace a smoke alarm that is not working within two business days of becoming aware of this.⁴

If the landlord fails to do this, the tenant must arrange for an authorised electrician to repair or replace the smoke alarm, and is entitled to reimbursement from the landlord within seven days of notice to the landlord.⁵

Moreover, smoke alarms are to be replaced by the landlord every ten years or an earlier time if specified by the manufacturer.⁶

Comasters can advise clients with creating and understanding residential tenancy agreements.

¹ Residential Tenancies Regulation 2019 (NSW) Schedule 1, r 51.

² Ibid r 7.

³ Ibid Part 3.

⁴ Ibid r 13.

⁵ Ibid r 17-18.

⁶ Ibid r 20.

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