

## RESIDENTIAL TENANCY LAW CHANGES

Commencing 23 March 2020

<https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/new-residential-tenancy-laws>

New residential tenancy laws start on 23 March 2020.

Changes to the residential tenancy laws start on 23 March 2020, with amendments to the Residential Tenancies Act 2010 (the Act) and the new Residential Tenancies Regulation 2019 (the new Regulation).

What are the changes?

The changes improve tenants' renting experience while ensuring landlords can effectively manage their properties. The changes aim to reduce disputes over repairs and maintenance, increase protection and certainty for tenants, and clarify the rights and obligations of tenants and landlords.

The following information highlights the key changes starting on 23 March 2020.

### Minimum standards to clarify 'fit for habitation'

Landlords are currently required to provide the rented property in a reasonable state of cleanliness and 'fit for habitation'. The changes introduce 7 minimum standards which clarify the meaning of 'fit for habitation'.

The minimum standards set clearer expectations for landlords and tenants and will apply to all rented properties. The standards are:

1. Structurally sound property
2. Adequate natural or artificial lighting in each room, except storage rooms or garages
3. Adequate ventilation
4. Supplied with electricity or gas and has adequate electricity or gas outlets for lighting, heating and appliances
5. Adequate plumbing and drainage
6. Connected to a water supply service or infrastructure for the supply of hot and cold water for drinking, washing and cleaning
7. Contains bathroom facilities, including toilet and washing facilities, which allow user privacy.

All NSW landlords will need to ensure that their rented properties meet the minimum standards to be fit for habitation by 23 March 2020. Rented properties are already required to be fit for habitation and should already meet these basic standards.

If a rented property meets the minimum standards, it does not automatically mean that it is 'fit for habitation', as these are baseline standards and are not a full list of whether a property is fit for habitation.

These standards must be met at the start of each tenancy and must be maintained throughout the tenancy (by way of repairs).

### New smoke alarm obligations for landlords

From 23 March 2020, all NSW landlords will need to ensure that smoke alarms installed in the rented property are in working order. A penalty will apply for landlords who fail to comply.

The details on when a landlord must repair or replace a battery-operated or hardwired smoke alarm, and when a tenant may repair or replace a smoke alarm, is in the new Regulation. The existing provision that allows landlords to enter the property without consent has been extended to specifically include inspecting or assessing the need for repairs to, or replacement of, a smoke alarm if proper notice has been given to the tenant.

### Information for landlords

To ensure smoke alarms installed in the rented property are in working order, a landlord must:

- carry out annual checks to ensure all smoke alarms installed at the property are in working order
- replace a removable battery in all smoke alarms in the period specified by the smoke alarm manufacturer (for a removable lithium battery), or otherwise annually
- repair or replace a smoke alarm that is not working within 2 days of becoming aware that it is not working
- replace a smoke alarm with a new smoke alarm within 10 years from the manufactured date, or earlier if specified by the smoke alarm manufacturer.

### Information for tenants

Tenants will need to notify the landlord if a repair or a replacement to a smoke alarm is required, including replacing a battery in a smoke alarm.

A tenant can choose to replace a removable battery in a smoke alarm, but they will need to notify the landlord if and when they do this. A tenant may only repair or replace a smoke alarm if the landlord fails to repair or replace a smoke alarm within the prescribed time (as detailed above). Tenants are entitled to reimbursement for the costs of a repair or replacement of a smoke alarm if they provide appropriate evidence. These provisions do not apply to social housing tenants.

We will provide a smoke alarm safety checklist and more information to ensure compliance with the new obligations before the laws start.

Making it easier for tenants to install fixtures or make alterations, additions or renovations of a 'minor nature'

### Changes of a 'minor nature'

Tenants are currently allowed to install fixtures or make alterations, additions or renovations if they have the landlord's written consent, or if the residential tenancy agreement permits it. The tenant must pay for the fixture they install or for any alteration, renovation or addition to the property, unless the landlord agrees otherwise. If the tenant's request for a fixture or alteration, addition or renovation is of a 'minor nature' then the landlord must not unreasonably withhold consent.

The new Regulation includes a list of the kinds of fixtures or alterations, additions or renovations of a 'minor nature' for which it would be unreasonable for a landlord to withhold consent. The new Regulation also specifies which of those changes a landlord may require be carried out by a qualified person.

The changes will not apply if a property is listed on the [loose-fill asbestos insulation register](#), or if the property is a heritage item. Some restrictions also apply to property in a strata scheme or in a residential land lease community.

Even if the fixture, alteration, addition or renovation is included in the above list, tenants are still required to get the landlord's written consent to the change. However, for changes that are on the list and not covered by an exemption, it is unreasonable for the landlord to refuse consent or place conditions on the consent.

### **Damage and removing modifications**

Tenants are still responsible for any damage they cause to the property. The existing requirements on liability for damage and removing any alterations, additions, renovations or fixtures still apply.

At the end of the tenancy, a tenant is responsible for leaving the property in the same condition as at the start of the tenancy, except fair wear and tear. This includes making sure any alterations, additions or renovations are removed and also fixing any damage caused to the property. For 'fixtures', a tenant can choose whether to remove any 'fixtures' they have installed, provided they repair or compensate the landlord for any damage caused by removing the fixture. A tenant cannot remove any fixtures if the landlord paid for them.

Landlords may apply to the NSW Civil and Administrative Tribunal (the Tribunal) to seek compensation from the tenant for the costs involved if the work is not done to a satisfactory standard, or if the work is likely to adversely affect the landlord's ability to let the premises to other tenants if it isn't corrected.

### **New mandatory set break fees for fixed term agreements**

Mandatory set fees when a tenant breaks a fixed-term agreement early will apply to all new fixed-term agreements that are 3 years or less. This applies to agreements that are entered into from 23 March 2020 onwards.

The break fees are:

- 4 weeks rent if less than 25% of the lease had expired
- 3 weeks rent if 25% or more but less than 50% of the lease had expired
- 2 weeks rent if 50% or more but less than 75% of the lease had expired
- 1 week's rent if 75% or more of the lease had expired.

Using the example of a 12-month tenancy agreement, a tenant would only be required to provide two weeks' rent to their landlord (that is, an amount equal to two week's rent) to end their agreement early, if seven months (or 58%) of the agreement had expired.

### **Strengthened information disclosure requirements**

A landlord or agent must not make false or misleading statements or knowingly conceal certain material facts from a prospective tenant before they sign an agreement. The list of current material facts is available in the information statement ([checklist for new tenants](#)) that a landlord or agent must give a tenant before the tenant enters into a tenancy agreement.

Before signing an agreement, a landlord or agent must also tell a tenant of any proposal to sell the property if the landlord has prepared a contract for sale, or if a mortgagee (i.e. bank or other lender) is taking court action for possession of the property.

The new laws expand the list of current material facts and information that prospective tenants must be told before entering into an agreement. The new laws also provide a remedy for tenants when material facts and

information are not disclosed. The changes recognise the potential hardship tenants face if they are not provided with important information about a tenancy.

### **New material facts**

In addition to the current material facts, from 23 March 2020, a landlord or agent will also need to disclose if the property:

- has been used for the manufacture or cultivation of a prohibited drug or prohibited plant in the last 2 years
- is in a strata scheme where scheduled rectification work or major repairs will be carried out to common property during the fixed term of the agreement
- is part of a building to which a:
  - notice of intention to issue a fire safety order, or a fire safety order, has been issued requiring rectification of the building for external combustible cladding, or
  - notice of intention to issue a building product rectification order, or a building product rectification order, has been issued requiring rectification of the building for external combustible cladding, or
  - development application or complying certificate application has been lodged for rectification of the building for external combustible cladding.

### **New information to be disclosed to prospective strata tenants**

From 23 March 2020, before a tenancy agreement is signed, a landlord or agent will need to give a tenant a copy of the strata scheme's by-laws. They will also need to inform the tenant if a strata renewal committee is currently established for the scheme. These changes provide greater protection for prospective strata tenants and are additional requirements to the general disclosure obligations.

### **Remedies for tenants for breaches to information disclosure obligations**

From 23 March 2020, a tenant will be able to end their tenancy agreement by giving at least 14 days' notice if the landlord or agent fails to comply with any of the information disclosure obligations. A tenant can also apply to the Tribunal for an order to end the tenancy. The Tribunal will also have the discretion to order the landlord to compensate the tenant for any costs incurred as a result of ending the tenancy agreement.

### **Water efficiency measures**

For a landlord to be able to pass on water usage charges to the tenant, the residential property must be separately metered, meet the water efficiency measures, and the charges must not exceed the amount payable by the landlord (according to the water supplier's bill or other evidence).

The new laws include additional water efficiency measures, including that all taps and toilets on the property need to be checked at the start of a tenancy so that any leaks are fixed. Taps and toilets must also be checked whenever any other water efficiency measures are installed, repaired or upgraded and any leaks fixed. This requirement applies to existing and new tenancy agreements from 23 March 2020.

From 23 March 2025, all toilets in rented properties must be dual flush with a minimum 3-star rating in accordance with the Commonwealth [Water Efficiency Labelling and Standards \(WELS\)](#) scheme. The WELS scheme uses a rating system to help consumers make informed choices about the water efficiency of products they buy.

Landlords who intend to replace or upgrade existing toilets in their property should consider installing dual flush toilets with a minimum 3-star WELS rating to meet the water efficiency requirements by 23 March 2025.

### **New rectification order process**

From 23 March 2020, NSW Fair Trading will have new powers to resolve disputes between tenants and landlords over repairs and maintenance and property damage. This includes the ability to issue rectification orders. The rectification order process will support tenants and landlords to resolve disputes about property repairs and damage in a tenancy by working with Fair Trading.

Landlords will be able to apply to Fair Trading to investigate whether a tenant has caused or allowed damage to the property and has refused or failed to repair, or not satisfactorily repaired, the damage without a reasonable excuse.

Tenants will be able to apply to Fair Trading to investigate whether the landlord has failed to provide and maintain the property in a reasonable state of repair.

A landlord or tenant must first make a written request to the other party to try and resolve the issue and can then apply to Fair Trading if the issue is not resolved.

More information about the application process will be available when the new laws start.

### **Other changes**

- rent increases for periodic (continuing) leases will be limited to once every 12 months
- a new definition for *separately metered* to reduce disputes between tenants and landlords about who pays for electricity, gas or water usage charges
- changes to make it easier for tenants to get repair orders from the NSW Civil and Administrative Tribunal
- clarifying the rules around taking photos and videos during inspections and publishing them to advertise the property for sale or re-lease, especially where the tenant's possessions are visible
- ensuring tenants can access their own personal information held on tenancy databases, without being charged a fee
- providing mandatory terms that cannot be modified or excluded from fixed-term tenancy agreements of 20 years or more.

### **New standard form of agreement**

The standard form of agreement has been updated to reflect the rights and obligations between landlords and tenants under the new laws.

The changes aim to increase transparency between landlords and tenants about their rights and obligations and information relevant to the rented property.

The new standard form of agreement is in the new Regulation and must be used from 23 March 2020 onwards.

### **New condition report**

The condition report has been updated to reflect the new laws, including the minimum standards and smoke alarm requirements.

The requirements around condition reports have also been improved by:

- allowing a condition report to be provided to tenants electronically
- introducing a penalty if a landlord or agent does not provide a tenant with two hard copies or one electronic copy of the completed property condition report at the start of the tenancy
- providing that tenants complete and return the condition report within 7 days of taking possession of the property (instead of from when they receive the condition report), but only if the tenant has received the condition report.

The new form of condition report is available in the new Regulation and must be used from 23 March 2020 onwards.

### When will the new laws start?

The changes start on 23 March 2020.

### Do the laws apply to existing residential tenancies?

Some of the new laws will not apply to existing agreements entered into before 23 March 2020. For example:

- new mandatory break lease fees only apply to new fixed-term agreements that are 3 years or less
- new landlord information statement requirements only apply when entering into a new residential tenancy agreement
- new requirements around condition reports apply when the tenancy agreement is given to the tenant for signing
- new information disclosure obligations apply before entering into a new residential tenancy agreement.

### Background to the changes

A statutory review of the *Residential Tenancies Act 2010* (the Act) was undertaken during 2015-2016 and a report on the statutory review was tabled in Parliament on 23 June 2016. The report made 27 recommendations to modernise and improve the Act.

On 17 October 2018, the NSW Parliament passed the *Residential Tenancies Amendment (Review) Act 2018* (the Amendment Act), which introduced a range of reforms and improvements to the Act. The Amendment Act implements the majority of the recommendations of the statutory review, and other reforms aimed at improving the renting experience.

On 28 February 2019, the [domestic violence related provisions](#) started.

During 2019, a new Regulation was developed to allow the reforms to take effect, implement some of the remaining recommendations in the report on the statutory review and to replace the current Regulation.

The changes follow an extensive review and public consultation on the Act, as well as consultation on the draft Regulation.

On 23 March 2020, the Act will be amended by the Amendment Act and the new Regulation will replace the current Regulation.

### More information

Visit the NSW Legislation website to read the new laws in full:

- [Residential Tenancies Amendment \(Review\) Act 2018](#)
- [Residential Tenancies Regulation 2019](#)

New forms and guidelines will be available before the new laws start on 23 March 2020.