

Key Changes for NSW Renters in 2019

Amendments to the *Residential Tenancies Act 2010*



Redfern Legal Centre



Amanda Brooker

Tenants' Advocate
Inner Sydney Tenants Advice & Advocacy Service
Redfern Legal Centre

Acknowledgement Of Country

Outline

1. Overview of the changes
2. Bonds for social housing tenancies
3. Ending a tenancy because of domestic violence
4. Changes to break fees
5. Minimum standards for rental properties
6. Repairs and Fair Trading

Resources www.rlc.org.au/training/resources/renters

Word of Caution

This webinar discusses only some of the 2019 changes to the Act.

As of 4/4/2019, only two of the changes discussed here are in force:

- Bonds for social housing tenancies
- Domestic violence terminations.

There has been no announcement about when the other changes will come into force – please check with your local tenants advice service.



1. Overview of the changes

What is changing?

As of **28 February 2019**, a number of changes to NSW rental laws are in place, including:

1. Social housing providers may now charge a bond on social housing tenancies in some circumstances.
2. A victim of domestic violence is now more easily able to terminate their tenancy immediately without penalty.

What is changing #2

The following changes are likely to come into force at some point after the election in March 2019:

3. There will be changes to the break fee provisions for tenants wishing to terminate fixed term tenancies early.
4. There will be clarification on a landlord's obligation to provide a premises 'fit for habitation'.
5. There will be a scheme which allows for Fair Trading to investigate disputes regarding repairs.



2. Bonds for Social Housing Tenancies

Who is affected by the bond change?

A rental bond can only be charged for those social housing tenants in:

1. **public housing** (landlord is NSW Land and Housing Corporation LAHC)
2. **Aboriginal Housing** (landlord is the Aboriginal Housing Office (AHO)).

Bonds cannot be charged where the landlord is a **community housing** provider.

When can a social housing tenant be required to pay a rental bond?

A landlord may require a social housing tenant to pay a rental bond at any time during the tenancy.

When can a social housing tenant be required to pay a rental bond #2

A social housing tenant can only be required to pay a rental bond if:

1. They did not pay a bond when entering the agreement.
2. They belongs to a class of tenant specified in the rental bond guidelines (ie. the policy).
3. They have been given 14 days written notice that they are required to pay a specified rental bond.
4. The amount of the bond is determined in accordance with the rental bond guidelines.

When can a social housing tenant be required to pay a rental bond #3

Social housing providers will need to go through the same process to claim a bond (or part of a bond) as private landlords do, at the end of a tenancy.

What do we know about the guidelines so far?

Family and Community Services (FACS) has not yet published a comprehensive policy about rental bonds.

What do we know about the guidelines so far

#2

Current requirements indicate that a social housing tenant will fall into the class of tenants required to pay a rental bond where the tenant has caused damage valued at \$500 or more in a current or previous social housing tenancy and:

- a. Where the damage is discovered and charged at a single point after the commencement of the policy (current leases)
- b. Where the damage is discovered and charged at a single point within 6 years of signing a new tenancy agreement (previous leases).

Source: <https://www.facs.nsw.gov.au/housing/policies/rental-bonds-policy>

What do we know about the guidelines so far

#3

The amount of the bond will be determined by FACS but will not exceed 4 weeks of market rent and will be capped at \$1400.

FACS has indicated that it will not require the bond to be paid within 14 days – it will allow tenants the option of entering into a payment plan to pay it over the course of 2 years.

Source: <https://www.facs.nsw.gov.au/housing/policies/rental-bonds-policy>

Can a social housing tenancy be terminated for failure to pay a rental bond?

The changes allow for a social housing provider to issue a termination notice where a tenant fails to pay all or part of a bond.

Where the tenant fails to pay the bond in accordance with the agreed payment plan with FACS or within the 14 days required by the notice, FACS may issue a termination notice requiring vacant possession to be given not less than 14 days after issuing the notice.

Can a social housing tenancy be terminated for failure to pay a rental bond #2

No landlord can evict a tenant without a valid order of possession from the NSW Civil and Administrative Tribunal (NCAT).

A social housing tenant who has been issued such a termination notice should contact their local tenants advice service.



3. Termination because of domestic violence

When can you terminate a tenancy due to domestic violence?

You can terminate a tenancy early due to domestic violence when:

1. There has been domestic violence in the household; and
2. You are a tenant, co-tenant or occupant of the household; and
3. You want to leave the tenancy; and
4. You have relevant evidence of the domestic violence that has occurred, such as a domestic violence order (need not be final) or a certificate from a recognised medical practitioner.

Steps to terminate a tenancy under the new domestic violence provisions

1. Draft a domestic violence termination notice specifying a date to give vacant possession. This can be immediate.
2. Attach the evidence of the domestic violence to that notice.
3. Serve the notice on both the landlord and any other tenant occupying the premises.
4. Give vacant possession by moving your things out and handing the keys back to the landlord.

Requirements for terminating a tenancy early for domestic violence

The landlord and other tenants must keep confidential, store and dispose of the evidence used to establish domestic violence in a secure way.

A tenancy terminated in this way will not incur a penalty for breaking a lease early.

Other non-perpetrator co-tenants will be given 2 weeks' relief from paying more than their share of rent and may apply to the Tribunal to terminate their tenancies if they wish.



4. Break fee provisions

What is a break fee?

A break fee is an amount of money that a landlord may charge if a tenant terminates their lease before the end of the fixed term.

The break fee must be specified in the lease.

What is changing with break fees?

Reduction in the maximum break fee from 6 weeks rent to 4 weeks rent. Break fees will be based on how much of the fixed term had expired when the premises were abandoned:

- if less than 25% = 4 weeks rent
- if more than 25% but less than 50% = 3 weeks rent
- if more than 50% but less than 75% = 2 weeks rent
- if 75% or more = 1 week's rent.



5. Minimum standards for rental properties

What is the landlord's existing obligation regarding the standard of the property?

A landlord has an obligation to provide the premises in a reasonable state of cleanliness and **'fit for habitation'**

(section 50)

“Fit for habitation”

A new section will set out the minimum requirements for a property to be considered ‘fit for habitation’. These are baseline standards and are not an exhaustive list. The property must:

- a. be structurally sound;
- b. have adequate natural/artificial light in each room (except storage rooms);
- c. have adequate ventilation;

“Fit for habitation” #2

- d. be supplied with electricity/gas and has an adequate number of sockets to supply lighting, heating and the use of appliances;
- e. have adequate plumbing and drainage
- f. be connected to a water supply to provide hot, cold and drinking water; and
- g. have bathroom facilities including toilet and washing facilities that allow for privacy.



Repairs and a new role for Fair Trading

Investigation of breach by Fair Trading

Landlords and tenants will be able to apply (for a fee) for NSW Fair Trading to investigate certain breaches:

- Landlords - damage by tenants.
- Tenants - failure to repair by landlords.

Fair Trading will then have the power to investigate a dispute and issue a rectification order requiring the tenant to repair any damage or the landlord to carry out repairs to the premises.

Investigation of breach by Fair Trading #2

There is no enforcement mechanism in the Act – so it is unclear whether this will be effective.

NCAT is a more effective and efficient option to compel landlords to repair the premises, because:

- it has an enforcement mechanism;
- NCAT can make orders for compensation and rent reductions/abatements;
- there is only one fee for the resolution of the matter in its entirety.

Questions?



Amanda Brooker

Tenants Advocate
Redfern Legal Centre

Resources: www.rlc.org.au/training/resources/renters

TENANTS NSW

Information, Advice and Advocacy

Search...



Tenancy info

News and policy

Contact us

POPULAR TOPICS:

Starting a tenancy



Rent and bond



Eviction



You want to leave



Repairs and utilities



Privacy, access and security



Share houses, boarders and lodgers



Public, community & Aboriginal housing



GET ADVICE FROM YOUR LOCAL TENANT ADVOCATE:

Enter your suburb or postcode...

Go

Aboriginal Tenant Services

Tenants Advice & Advocacy Services

www.tenants.org.au

fact sheets and sample letters

free confidential legal advice on social housing

- enter your suburb

Before You Go

Your feedback helps us improve our training.
Please stay with us for another 60 seconds...



Training: rlc.org.au/training
Enquiries: Nick Manning
education@rlc.org.au

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

Thank you



Redfern Legal Centre

We Can Come to You

RLC can present this workshop at your staff training or interagency – or we can customise training to suit your needs.



Enquiries: Nick Manning
(02) 9698 7277
education@rlc.org.au