

Completing a tenancy agreement

Information for landlords

A residential tenancy agreement (also called a lease) is an agreement between you and the tenant to live in your premises in return for payment of an agreed rent. The agreement is a legal contract which sets out the terms and conditions of the arrangement.

You need to complete and sign a written tenancy agreement at the start of each tenancy. Before the tenant signs the agreement they must be given a copy of the *New tenant checklist*.

Properties with swimming pools and spa pools

Does the property you want to rent out have a swimming or spa pool? If so, from 29 April 2016, a copy of a valid certificate of compliance or occupation certificate (issued in the past 3 years) must also be provided to the tenant before entering into a new residential tenancy agreement. Pool owners wanting to rent out or sell their property should act now, as work may be needed before a certificate can be issued.

This requirement does not apply to properties in strata or community schemes with more than two lots, as these properties are already inspected by Councils every 3 years. The revised standard form residential tenancy agreement includes an updated clause relating to swimming pools or spa pools in strata or community schemes with more than two lots. An addendum is also available, which can be used with existing stock of the version of the residential tenancy agreement available prior to 29 April 2016. You will need to use either of these options before entering into a new residential tenancy agreement from 29 April 2016.

You will be in breach of the new residential tenancy agreement if you fail to provide the tenant with a copy of the certificate of compliance or relevant occupation certificate. Please visit the swimming pools page on the Fair Trading website for further information or contact your local council.

Types of agreement

There are two types of tenancy agreement.

Fixed term agreement

This is where the agreement is for a fixed period of time (such as for 6 or 12 months or other agreed period) and specifies an end date. A fixed term agreement is used at either the start of a tenancy or when the parties are renewing the agreement once the original fixed term period has ended.

Periodic (continuing) agreement

This is a tenancy for an indefinite period. You automatically move to a periodic agreement when a fixed term agreement ends, if the tenant remains and no new agreement is signed. You can have a periodic agreement from the beginning but this is uncommon. In a periodic agreement, you and the tenant must follow the rules set out in the original agreement (or in the prescribed standard agreement if there wasn't a signed agreement).

The rights and obligations under both types of agreements are generally the same. However, there are differences in relation to terminating the tenancy and rent increases.

If you fail to have a written agreement in the proper form at the start of a tenancy, penalties can be imposed. In addition, you are unable to evict the tenant without a reason or put the rent up during the first 6 months.

Additional terms

There are 40 mandatory terms in the standard form of tenancy agreement. There are also two optional additional terms about 'break fees' and 'pets'. You need to decide if you want these two terms to stay in the agreement. If not, they will need to be deleted before anyone signs.

Other additional terms may be added to the agreement so long as they:

- do not conflict with the tenancy laws or any other laws and
- do not conflict with the standard terms of the agreement
- however, there are a number of terms which are prohibited from being added to a tenancy agreement.

These are terms which would:

- require the tenant to have the carpet professionally cleaned, or pay the cost of such cleaning, at the end of the tenancy (except as part of a separate arrangement to allow the tenant to keep a pet on the premises)
- require the tenant to take out any form of insurance, such as home contents or public liability insurance
- exempt the landlord, agent or any other person from legal liability for any negligent act or omission
- require the tenant to pay a higher rent, a penalty or some other form of damages if they breach the agreement
- give the tenant a reduced rent or rebate for not breaching the agreement or
- require the tenant to use the services of a particular person or business to carry out their obligations under the agreement, such as a nominated lawn mowing or pool cleaning company.

Any additional terms which are prohibited or conflict with the law or the standard terms are void and unenforceable. Penalties can be imposed for including prohibited terms in a tenancy agreement.

Giving the tenant a copy

You, or your agent, must give a copy of the tenancy agreement to the tenant at the time they sign it. If that copy has not been signed by the landlord, a fully signed copy must be given to the tenant as soon as possible. If the agreement is for a period of more than 3 years and needs to be registered with the Land and Property

Management Authority, you should provide the tenant with a copy of the agreement as soon as possible after it has been registered.

Cost of agreement

The tenant cannot be charged any fee for their copy of the agreement or the costs associated with filling it in. If you are using an agent, you can negotiate whether or not they will charge you for preparing and supplying the agreements, and how much, when entering into the agency management agreement. Stamp duty is no longer payable on residential tenancy agreements. However, if the agreement term is for more than 3 years, the tenant can be requested to pay the cost of registering it with the Land and Property Management Authority.

Agreements of 20 years or more

If you are willing to offer a fixed term agreement of 20 years or more, the Act provides a large degree of flexibility. You are able to omit or vary most of the mandatory terms of the standard agreement. For instance, your agreement may provide for the tenant to take on the responsibility of maintaining the premises in return for a cheaper rent. The only things which you cannot alter in an agreement of 20 years or more are:

- the responsibility of the landlord to pay rates, taxes and charges
- the limit of no more than one rent increase per year
- access to the NSW Civil and Administrative Tribunal to resolve disputes and
- the grounds on which the agreement may be terminated.

Be mindful though that the tenant can apply to the Tribunal if they believe a term you have included in the agreement is in their view unconscionable, unjust, harsh or oppressive. The Tribunal has the power to strike out such terms if it agrees.