

Tenancy: Starting a Tenancy

Introduction

Starting a tenancy is a big commitment. We recommend consulting the *Tenant's Rights and Obligations* factsheet as a first step.

Before Signing the Lease

The tenant should inspect a property prior to signing a tenancy or occupancy agreement if possible. They should arrange a time that suits both themselves and the prospective landlord, and have a thorough look at the property. When inspecting a property, the tenant should consider whether it suitably meets their needs, the general state of repair, if the facilities are adequate and if it is safe.

The tenant should also confirm the cost of rent for the term of the lease, and ensure they can afford it. It is unwise for a tenant to enter a tenancy with the expectation that they will be able to rent out rooms or sublet to cover the costs. Both these options are illegal without the landlord's consent (see our factsheet on Sub-letting).

The tenant should also discuss with the landlord about utility services (electricity, water, gas etc.) at the property and whether these services are connected under the landlord's name (if so, how will the tenant make payments) or whether the rent is inclusive of utility bills.

Signing the lease

The landlord should provide the tenant a copy of the proposed residential tenancy agreement and allow reasonable time for the tenant to review it.

At the time the lease is provided, the landlord must provide the tenant with the following information:

- a) The landlord's full name;
- b) An address for service (if the landlord has a real estate agent, the address for service is often the real estate agent's company's address);
- c) A copy of an energy efficiency rating statement (if any);

- d) A copy of an asbestos assessment report or an asbestos advice for the premises (if any); and
- e) A written statement about whether premises comply with the minimum housing standards (e.g. minimum energy efficiency standards), otherwise the reasons why the premises do not comply or the reasons why the premises are exempt from complying. Please refer to factsheet – *Residential Tenancies Legislation Amendment Bill 2022* for more information)

If a real estate agent manages the property, the agent must provide the tenant with the agent's full name and the fact that they are the agent of the landlord. The tenant is required to give the landlord their correct full name.

What is in the Lease?

The lease will contain the terms governing the arrangement between the tenant and the landlord. A tenancy agreement often includes the Standard Residential Terms (SRTTs), otherwise the landlord is obliged to give the tenant a copy of the SRTTs. All tenancy agreements automatically include and generally must comply with the SRTTs. If a tenancy agreement includes a term inconsistent with the SRTTs, the landlord is obliged to notify the tenant or the inconsistent clause must be annotated in a way that draw the attention of the tenant to the fact that it is inconsistent with the SRTTs. The tenant is not obliged to accept the inconsistent term. Even if the tenant agrees to a term inconsistent with the SRTTs, ACAT must formally endorse it before it forms part of the tenancy arrangement.

The tenant should also check whether their agreement has a break lease clause or a postings clause. These are optional terms that can be added to an agreement if both parties agree.

A break lease clause caps the amount of compensation the tenant will have to pay in the event that they break the lease early. More information on break lease clauses can be found on our website.

A postings clause allows for the agreement to be terminated in the event that either the tenant is posted to

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work in a different city or the landlord is posted to the city and needs to use the property.

If the tenant accepts the terms of the lease, then they can sign it, at which point they are a party to the residential tenancy agreement.

After Signing the Lease

Once the landlord receives a signed agreement by the tenant, the landlord must give the tenant a copy of the signed agreement and an information booklet about residential tenancies within 3 weeks.

The tenant may then need to pay a bond (see our factsheet on Bonds). The tenant may also be required to pay rent in advance. It would not be sensible to pay these until close to the move in date. It is also important to not make any purchases for the property prior to receiving the tenancy agreement signed by the landlord.

Moving in

Once the tenant moves into the property they should make a record of the condition of the property. It is wise to take dated photographs of the state of the premises when you move in. The tenant should also check that all of the amenities provided with the premises work – e.g. lights turn on, stove heats up, water comes out of taps, hot water flows. The tenant should also check that all locks work, and that they have keys to every lock.

The landlord is required, not later than the day after a tenant moves in, to give the tenant two copies of a condition report. A standard condition report is available from our website. For more information on condition reports, please check our factsheet on Condition Reports.

Within 2 weeks after the day the tenant receives the report, the tenant must return 1 copy of the report to the landlord, signed by the tenant and indicating the tenant's agreement or disagreement with the items.

The tenant should carefully check the condition report and ensure it accurately reflects the state of the premises. They should add comments where necessary. A large portion of disputes that come to the tribunal relate to the

state of the premises, and having a clear report of the condition at the start of the tenancy makes resolving these issues much easier.

Unless the tenant agrees, there should be no areas where the landlord has left their own belongings or “no-go” areas in the property.

The tenant should arrange for connection of utility services such as electricity, water and gas unless these services are already connected under the landlord's name.

If there are any problems with the property the tenant should immediately contact the landlord or their agent about the problems and ask that they be resolved.

If you have any questions arising out of the information provided in this fact sheet, or you are having a bond dispute with your landlord or co-tenant, contact the **Tenancy Advice Service** on:
1300 402 512 or TAS@legalaidact.org.au

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