

CONSUMER AFFAIRS - TENANCY

Resolving Common Tenancy Disputes

RESOLVING TENANCY DISPUTES

Consumer Affairs and the Commissioner of Tenancies are often asked to arbitrate in disputes between tenants and landlords/real estate agents.

The most common complaints are about:

- access to the premises by the landlord/agent;
- maintenance of the property; and
- withholding security deposits.

The following guide will help you to avoid or resolve disputes and ensure the right information is provided to the Commissioner of Tenancies where necessary.

ACCESS TO THE PREMISES BY THE LANDLORD/AGENT

If the landlord/agent wants to visit your place, they must have a good reason and they must give you the right amount of notice.

- To collect rent. They can not enter more than once a week and must give you 7 days notice.
- To inspect the place. They can not enter more than once every 3 months (unless the tenancy agreement says otherwise). You must be given at least 7 days notice.
- To carry out or inspect repairs or maintenance on the property. You must be given 24 hours notice.
- In an emergency or to protect the premises from damage. No notice is required.
- To show the place to a prospective tenant or purchaser. You must be given 24 hours notice.

The landlord/agent can only enter the premises in the presence of or with the approval of the tenant. Inspections must be scheduled for a mutually convenient time between the hours of 7am and 9pm.

If the landlord/agent is living nearby they must be careful not to infringe on your privacy.

Should the landlord/agent insist on access to the premises without the right amount of notice they are breaking their agreement with you. You should contact Consumer Affairs for advice.

If you decide to make an Application to the Commissioner of Tenancies you should support your application with a record detailing all your communications with the landlord/agent. In particular you should include the amount of notice given to you and the date, time and reason the landlord/agent required access.

MAINTENANCE OF THE PROPERTY

While you are living in the premises, you need to:

- keep the place clean;
- report to the landlord/agent any maintenance required or damage to the property and take responsibility for any damage to the property that you or your guests intentionally or negligently cause; and
- not change, remove or add a lock or security device without the consent of the landlord/agent unless you have a reasonable excuse like the locks being forced and destroyed because of a burglary.

The landlord/agent is responsible for maintaining the place in a reasonable state of repair and the landlord might need to repair things while you're living there.

Problems with health services such as sewerage, water supply, power, refrigeration and cooking facilities should be attended to within 5 business days of your advising the landlord/agent. Repairs to make premises habitable and safe should be attended to in 7 business days.

If you were responsible for the damage, you'll have to pay. But if the damage was due to fair wear and tear, the landlord/agent will have to pay for the repairs.

You should only install new fixtures and fittings to the place (like window locks, security doors and new taps) with written permission from the landlord/agent. The landlord/agent should outline what changes have been approved and any terms to the agreement (like whether you have the right to remove them when you leave).

If you change, alter or add a lock or security device without written permission from the landlord/agent you must have a reasonable excuse to do so and provide a key to the lock or security device to the landlord/agent within 2 business days of the change, alteration or addition.

If you install a fitting or make a change to the place without getting the landlord/agent's agreement, the landlord/agent has two options:

- They can treat it as a breach of the tenancy agreement and go through the process for resolving a breach
- They can tolerate the breach and accept it as an improvement to the premises that they will keep when you leave.

If you have the right to remove any fittings you've added you must pay for the repair of any damage caused by their removal.

If maintenance is not attended to by the landlord/agent you should contact Consumer Affairs for advice and to make an Application to the Commissioner of Tenancies. You should support your claim with a statement of the maintenance that is outstanding. The Commissioner may issue the landlord/agent with an order to carry out the works.

WITHHOLDING THE SECURITY DEPOSIT

Within 7 business days after you have left the premises the landlord/agent must return the security deposit to you other than any amount that the landlord/agent may retain.

The landlord/agent may retain the security deposit for the following purposes:

- To make good any damage to the property, other than reasonable wear and tear, which you are responsible for.
- To replace any item that is included in the premises that is lost or destroyed and the tenant is responsible for its loss or destruction.
- To clean the premises if it is left unreasonably dirty.
- To replace locks altered, removed or added by the tenant without the consent of the landlord.
- To pay for any unpaid rent or for any unpaid electricity, gas or water charges payable by you.
- To pay compensation to the landlord if you remain in the property when you should have given possession to the landlord.

For the landlord to retain any or all of the security deposit they must give a notice to you within 7 business days of you having left the premises. They must tell you how much they are keeping, what it is for and attach receipts and other supporting documentation to support their claim. They must also include the balance of the security deposit they are not claiming.

If you disagree with any or all of the security deposit being retained by the landlord you may contact Consumer Affairs and make an Application to the Commissioner of Tenancies. You should do this after you have received notice of part of the security deposit being retained or if no notice has been received, after 7 business days of you having left the premises.

UNPAID RENT

If the dispute is for unpaid rent, the Commissioner of Tenancies will require the landlord/agent's rent book to substantiate rental payments.

DAMAGE TO PREMISES OR ANCILLARY PROPERTY

The landlord is not entitled to retain any or all of the security deposit to pay to make good damage or replace lost or destroyed items unless a completed, signed condition report was provided to you no later than 3 business days after you took possession of the premises.

Even then tenants and landlords must distinguish between damage through neglect or abuse and general wear and tear.

In assessing the difference the Commissioner will take into account:

- the length of the tenancy
- the type of premises (pets allowed, family dwelling); and
- the age of fixtures or appliances provided for the tenants' use.

Landlords must provide detailed and itemised receipts for damage repairs.

PREMISES LEFT UNREASONABLY DIRTY

The landlord must not retain any or all of the security deposit for cleaning the premises unless a condition report was completed and accepted by you at the beginning and end of the tenancy. If the premises need cleaning the Commissioner requires detailed, itemised accounts including the work done and the number of hours spent on tasks (eg. two hours for cleaning walls).

Claims for cleaning will be assessed against what is a reasonable time allocation based on the size of the premises and information contained in the condition reports.

POINTS TO REMEMBER

It is up to the landlord to prove any claim against the security deposit, including damage to property and the need for cleaning.

Don't take the matter into your own hands by paying less rent or no rent; if you do this you are breaking the tenancy agreement and you could be evicted.

Do keep records of your rental payments; it may help to avoid a dispute in the future.

Do try to keep all communications with the landlord/agent in writing and keep a log of all your telephone conversations and meetings detailing the date, time, duration and what was discussed.

If you apply to the Commissioner of Tenancies in the event of a dispute, you may be required to provide them with a copy of the tenancy agreement, condition reports, rent receipts, rent books, bank statements etc or other supporting papers showing your rent record to support your case.

For further information contact Consumer Affairs

Old Admiralty Towers, 68 The Esplanade, GPO Box 1722, Darwin NT 0801
Ph: 08 8999 1999 - Fax: 08 8935 7727

or

Level 1, Belvedere House, Parsons Street, PO Box 1745 Alice Springs NT 0871
Telephone: 08 8951 8606 Fax: 08 8951 5442

or phone 1800 019 319

Email: consumer@nt.gov.au

Web site: consumeraffairs.nt.gov.au

General Disclaimer: The material contained in this publication is intended for use as a guide and for general information only. It is not intended to be a substitute for independent professional advice. The Northern Territory Department of Justice accepts no responsibility or liability for the correctness, accuracy and completeness of any of the material contained in this publication and recommends that users of this publication exercise their own skill, care and judgment in the application of the information contained in the publication.