TENANTS RIGHTS FACTSHEET 14

Boarders and lodgers

This factsheet summarises the rights of boarders and lodgers under NSW law, including whether you are a boarder/lodger, about rent, bond and eviction.

About boarders and lodgers

Boarders and lodgers (or 'marginal renters') are renters who pay for the right to occupy residential premises but who are not covered by the *Residential Tenancies Act 2010*.

The Residential Tenancies Act excludes specific types of premises and types of agreement from its coverage. If you rent in one of the following types of premises, or under one of the following types of agreements, you will be excluded from the Residential Tenancies Act.

Types of premises which are excluded:

- serviced apartments, hotels, motels and backpackers hostels
- club premises used to provide temporary accommodation
- premises used mostly for the purpose of trade, profession, business or agriculture
- residential colleges in educational institutions (with some exceptions)

Types of agreement which are excluded:

- agreements under which a person boards or lodges with another person (e.g. in a private home)
- certain agreements to occupy refuge or crisis accommodation funded under certain government programs
- share-housing arrangements where a person sub-lets part of a premises to another without a written tenancy agreement

Unlike tenants, boarders and lodgers do not have the right to exclusive occupation of the premises – the landlord retains control over the premises.

Boarders usually get meals as part of their agreement whereas lodgers do not.

Are you a boarder/lodger or tenant?

Whether you are a boarder/lodger or a tenant will depend on how much control the landlord (or live-in manager or caretaker) has over the premises.

You are likely to be a tenant rather than a boarder/lodger, if you:

- have exclusive access to your own room (no-one else uses your room and you can lock it)
- do not get meals, linen, or cleaning as part of your agreement
- have your own cooking facilities
- do not have house rules enforced

The NSW Civil and Administrative Tribunal (NCAT) can decide whether you are a tenant or a boarder/lodger:

- if you claim rights as a tenant at the Tribunal in a dispute with your landlord, or
- if your landlord evicts you (or threatens to) and you challenge this in the Tribunal

If the Tribunal decides that it has the power to handle the matter under the *Residential Tenancies Act 2010* then you are a tenant. If not, you may be a boarder/lodger.

Note that if you rent a room in a 'registrable boarding house', you may be covered by the *Boarding Houses Act 2012*. Whether the premises are a 'registrable boarding house' are set out in Factsheet 15: *Boarding Houses Act 2012.*

Contact your local Tenants' Advice and Advocacy Service for advice.

Paying rent

Ask for receipts when you pay rent. If the landlord will not give you receipts, keep a record such as a diary of cash payments. Or, pay by cheque or money order and keep the stubs in a book.

Bond

If you pay a bond, be sure to get a receipt.

Encourage the landlord to deposit your bond money with NSW Fair Trading. However, they are not required to by law.

Repairs and maintenance

If you live in a boarding house, you could contact the local council. Some councils have rules about the minimum size of rooms, fire regulations and 'registration' of boarding houses.

If the boarding house does not meet these rules, the council may order the landlord to do certain repairs.

If premises are unsafe, the landlord could be held responsible under the law of negligence for any personal injuries caused by them not maintaining the premises.

Write to the landlord/caretaker and tell them that you

are concerned for your safety and/or the safety of other residents or guests. Keep a copy of this letter. Get advice from a Community Legal Centre if you are injured on the premises.

If you want to leave

Give the landlord a written notice to leave according to your agreement. Keep a copy of your notice.

If your agreement does not have a notice period, give 'reasonable' notice. For example, if you pay rent weekly, give 7 days notice.

Take all your belongings with you – if not, it may be hard to get them back.

Eviction

The landlord should give you notice to leave according to your agreement, otherwise 'reasonable' notice. For example, if you pay rent weekly, they should give you at least 7 days notice.

If the landlord is evicting you because they want to change the use of the premises (e.g. from a boarding house to a backpacker hostel), contact the planning section of the local council to see if they have permission. If they do not, ask the council to investigate.

The council can also refuse permission if the change of use will mean less affordable housing in the area.

If you are being evicted, contact your local Tenants' Advice and Advocacy Service for advice.

Disputes with the landlord

How you resolve disputes with your landlord depend largely on the type of agreement you have.

If you rent a room in a 'registrable' boarding house, you may have access to dispute resolution through the *Boarding Houses Act 2012*. See Factsheet 15: *Boarding Houses Act 2012* for more information on that Act.

If your landlord is running a business (e.g. you rent a room in a hostel), you may be able to apply under the *Fair Trading Act 1987* (NSW) to the General Division of the NSW Civil and Administrative Tribunal to have your dispute heard. Contact your local Tenants' Advice and Advocacy Service for advice about this.

If your landlord is not carrying on a business (e.g. you rent a room in your landlord's house), only the courts can deal with your dispute. In most cases, you would have to apply to the Local Court.

The Tribunal can decide whether you are a tenant, boarder/lodger or a renter covered under the *Boarding Houses Act 2012*. If you commence action in the Tribunal, a landlord or caretaker may want to settle a dispute in conciliation at the Tribunal without a full hearing to decide your legal status.

See also

- Factsheets: *Boarding Houses Act 2012, Share housing*
- Podcast episodes: *Full House*, *Tenants Facing Additional Barriers part 1* and *part 2*: tenants.org.au/resource/renting-matters
- More resources for boarding house residents: tenants.org.au/resource/more-boarding-house-resources

Contacts

- Community Legal Centres: phone 9212 7333, clcnsw.org.au
- NSW Civil and Administrative Tribunal: phone 1300 006 228, ncat.nsw.gov.au
- Local Courts: phone 1300 679 272 localcourt.justice.nsw.gov.au

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For free advice, call your local Tenants Advice & Advocacy Service:

SYDNEY:

• Eastern	9386 9147
• Inner	9698 5975
• Inner West	9559 2899
• Northern	9559 2899
• Southern	9787 4679
• South West	4628 1678
• Western	8833 0933

REGIONAL:

• Blue Mountains	4704 0201
• Central Coast	4353 5515
• Hunter	4969 7666
• Illawarra Sth Coast	4274 3475
• Mid Coast	6583 9866
• Northern Rivers	6621 1022
• Northwest NSW	1800 836 268
• Southwest NSW	1300 483 786

ABORIGINAL:

• Sydney	9833 3314
• West NSW	6881 5700
• South NSW	1800 672 185
• North NSW	1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW

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