



Building defects in strata

This fact sheet provides information about what rights you have as a tenant if you are living in a strata building and there are major structural defects. You may also wish to read our fact sheet about 'Renting in strata' and you can find more information on the website of the Tenants Union of NSW at <https://tenants.org.au>

Disclosing major works

Before you sign a tenancy agreement for a property in a strata building, your landlord must disclose any scheduled rectification work or major repairs that are to be carried out to the common property during the fixed term of your agreement. A failure to do so is a breach of your agreement.

If you move into a strata building and discover that major works are being undertaken, and this was not disclosed to you prior to entering the agreement, you have rights which can be enforced through the NSW Civil and Administrative Tribunal.

If you wish to stay, you may be able to ask the Tribunal to reduce your rent or award you compensation because the construction work has made the property partially unlivable.

Alternatively, if you wish to leave and you're in the fixed term of your tenancy agreement, you may be able to give a 14-day notice of termination for breach and leave without penalty.

However, if you are leaving during the fixed term there is a risk of having to compensate the landlord for breaking the lease, so you should speak to your local tenants' advice and advocacy service first to get advice.

Reducing rent

Your landlord has a duty to repair and maintain your home throughout your tenancy, and that obligation includes common property in a strata building.

However, there can sometimes be issues that go beyond your landlord's responsibility to repair the property. If you live in a strata building where there are serious structural defects (such as the building cracking), your landlord may not be required to fix those problems.

Although the landlord might not be responsible for repairing those defects, you do have a right to have your rent reduced.

If you are still able to live in the property but it has become partially uninhabitable, then your landlord should reduce your rent.

Similarly, if you cannot safely live in the property and need to move out for a period of time, you should request a full rent reduction from your landlord.

If your landlord does not agree, you can apply to the Tribunal for an order that your rent be reduced and that reduction backdated to when the problem started. You should make that application during your tenancy and within 28 days of becoming aware of the problems.

Before applying to the Tribunal, you should contact your local tenants' advice and advocacy service for advice on how to lodge the claim.

Ending an agreement

If you want to leave the property because major structural defects in the building have made it unsafe, you can give a notice of termination on the grounds of frustration.

Frustration means that the property can't be lived in for a reason that is not your fault or the landlord's fault. Frustration notices have no minimum notice period and can be given by either you or the landlord.

There may be risks ending your agreement during the fixed term, as your landlord may dispute that the property is unsafe and claim a break fee from you. You should always ensure you have good evidence that the property is not safe, such as a report from a builder or information from strata or the developer about the major structural defects.

Although a landlord can also issue a notice on the grounds of frustration, they can't use that as a way of avoiding their obligations to repair the property and provide it to you in a state that is fit to live in. If the property can't be lived in because the landlord hasn't done repairs, that is the landlord's fault and they can't terminate your agreement on the grounds of frustration.

If you receive a frustration notice from your landlord you do not need to leave. Your landlord cannot evict you without applying to the Tribunal for a termination order and they will need to prove that the property is not safe for a reason that is not their fault.

If you do wish to leave the property, you should contact your local tenants' advice and advocacy service before taking any action.

This factsheet is intended as a guide to your rights and obligations as a tenant 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.

Things to remember

◆
Before you sign your agreement, the landlord must tell you if strata is planning rectification work or major repairs.

◆
If there are major structural defects in the building and your property is not safe or you can't use parts of it, you are entitled to a rent reduction

◆
If your property is not safe and you want to leave during the fixed term, you may be able to end your agreement on the grounds of frustration without paying a break fee to the landlord.

Need more information or advice?

If you live in Sydney's Eastern Suburbs you can contact EATS on 9386 9147 or at www.eats.org.au/contact-us

Otherwise, you can find the contact details of your local TAAS at www.tenants.org.au