

Steps for dealing with building works

- 1) discuss the options with your household. Do they want to leave? Will they claim a rent reduction or rent abatement?
- 2) Try to negotiate with REA about leaving early or a rent reduction or both
- 3) Confirm negotiations in writing. If there is no outcome, consider your options.

RENT REDUCTION or ABATEMENT

Apply to NCAT for rent reduction (in the case of breach of the agreement) or rent abatement (if the premises are wholly or partly uninhabitable not due to a breach of the agreement). **NOTE that an application for rent reduction or abatement should be made while the tenancy is still going – that is before the tenant has returned the keys to the landlord.**

TERMINATION

If you want to leave the premises, or feel that you need to, consider

- (i) If you are in a periodic lease, find alternative premises, give notice and go.
- (ii) If you are in fixed term agreement:
 - Find out the penalties that could apply if you left the agreement early

- Consider the various options available to you, after identifying the nature of the problems; and who is causing them
- Consider the risks associated with different options, which will range from break lease penalties if the tenant gives notice and leaves the premises, to lesser losses if the tenant makes an application to NCAT and fails to get what they want.

(iii) Start appropriate termination proceedings or actions. If you leave after giving notice (without asking the Tribunal to end the agreement) be aware that the landlord will most likely come after you for compensation, probably with a claim on your bond.



Eastern Area Tenants Service

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What needs to be shown for a rent reduction / rent abatement / compensation application					
	Noise	Loss of use of whole or part – eg balcony, parking etc	Dust	Loss of light, fresh air, view, privacy from scaffolding etc	Exposure to hazardous materials
Rent Reduction – and rent abatement	▶ The number of hours in the week that the noise is so intense that the premises or part of the premises cannot be used as the tenant normally would, expressed as a proportion of the total hours in a week (168)	▶ The area of the premises that is unusable expressed as a percentage of the whole premises ▶ The difference in rent between a unit with a balcony/ car space and one without – use Domain.com, rents in similar areas, neighbours rents, etc.	▶ The area of the premises that is unusable expressed as a percentage of the whole premises ▶ Perhaps the amount of extra time needed for cleaning, expressed as a proportion of the total hours per week, ie as a rent reduction	▶ The documented difference in rent between a unit with a view and one that does not have a view. ▶ Refer previous Tribunal decisions for loss of ventilation and privacy	▶ Premises that are injurious to health are generally seen as being uninhabitable.
Compensation for loss –the Tribunal has to find that your landlord has breached the residential tenancy agreement	▶ Extra expenses that the tenant has incurred as a result of the noise	▶ Extra costs that the tenant has had to incur, such as rent for an alternate car space	▶ Cleaning products ▶ Cost of commercial cleaner ▶ Any damage to goods	▶ Cost of curtains, interior window coverings that may need to be installed for privacy	▶ The cost of alternate accommodation for the period the premises were uninhabitable.

Legal avenues for dealing with building works

<p>Where is the disruption coming from ▼</p>	<p>In this chart, Section numbers (such as S.43) refer to sections of the <i>Residential Tenancies Act 2010</i>. The tenant would refer to these in correspondence with the landlord and in NCAT applications.</p>
<p>Work on your premises or other premises owned by your landlord</p>	<ul style="list-style-type: none"> • Rent Reduction S.43, 44, 47 <i>You need a written request to landlord or agent and/or NCAT application if the request is unsuccessful</i> • Leave during a fixed term (possibly if the disruption is severe enough) S.98 landlord breach, end agreement by notice and leaving, S.103 asking the Tribunal to end the agreement because of breach by the landlord, S.104 asking Tribunal to end the agreement because of hardship to the tenant. <i>You need a Notice of termination (for S.98) or an NCAT application for the other options. Try to negotiate a settlement first.</i> • Claim compensation RTA s.187 for losses arising from the work <i>You need a written request to landlord or agent and application to the Tribunal if the request is unsuccessful</i>
<p>Work on other units in your strata building or complex</p>	<p>Either as above, or, or depending on the Tribunal's interpretation of the circumstances, (if it finds the landlord has not breached the agreement by causing or permitting the works)</p> <ul style="list-style-type: none"> • Rent abatement S.43, 45, 47 <i>You need a written request to landlord or agent and /or Tribunal Application</i> • Leave during a fixed term (possibly if the disruption is severe enough) S.109 Tribunal ends agreement after notice by tenant <i>You need to issue a Notice of termination and apply to the Tribunal</i> • Apply to the Tribunal to end the agreement during a fixed term – S.104 hardship to tenant, S.103, breach by landlord <i>You should make a written request to landlord or agent and apply to the Tribunal if the request is unsuccessful</i>
<p>Work on neighbouring premises not connected with your landlord or strata</p>	<ul style="list-style-type: none"> • Rent abatement RTA s.43, 45, 47 <i>You need a written request to landlord or agent and /or Tribunal Application</i> • Leave during a fixed term (possibly if the disruption is severe enough) S.109 Frustration, uninhabitable premises <i>You need a Notice of Termination and Tribunal Application</i> • Leave during a fixed term - S.104 Termination by Tribunal due to hardship to tenant. <i>You need a written request to landlord or agent and Tribunal Application</i>