

# THE BOARDERS & LODGERS LEGAL INFORMATION KIT



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**MALLESONS STEPHEN JAQUES**  
Prepared with the assistance of the Mallesons Human Rights Law Group

## Acknowledgments

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See [www.clovermoore.com/main/?id=291](http://www.clovermoore.com/main/?id=291) for more information.

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This kit was prepared with the assistance of the Mallesons Stephen Jaques Human Rights Law Group.

**This kit can be downloaded at [rlc.org.au](http://rlc.org.au)**

### *Cover Photograph:*

Mrs. Mary Surratt house at 604 H St. N.W. Wash, D.C.

Courtesy of US Library of Congress

<http://loc.gov/pictures/resource/cwpbh.03432>

## Legislation referred to in the kit

- ◆ Landlord and Tenant Act 1899 (NSW)
- ◆ Civil Liability Act 2002 (NSW)
- ◆ Consumer Claims Act 1998 (NSW)
- ◆ Consumer, Trader & Tenancy Tribunal Act 2001 (NSW)
- ◆ Contracts Review Act 1980 (NSW)
- ◆ Fair Trading Act 1987 (NSW)
- ◆ Local Court Act 2007 (NSW)
- ◆ Local Government Act 1993 (NSW); Local Government (General) Regulation 2005 (NSW)
- ◆ Public Health Act 1991 (NSW)
- ◆ Residential Tenancies Act 2010 (NSW)
- ◆ State Environmental Planning Policy (Affordable Rental Housing) 2009 (NSW)
- ◆ Supreme Court Act 1970 (NSW)
- ◆ The Australian Consumer Law [Competition and Consumer Act 2010 (Cth) Schedule 2]
- ◆ Uncollected Goods Act 1995 (NSW)
- ◆ Youth and Community Services Act 1973 (NSW)

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## 1. Boarder, lodger or tenant?

Even though you pay rent, not everyone who pays rent is treated the same way by the law. This may not matter to you while you are quietly enjoying your home. However, "tenants" have many legal rights, while "boarders and lodgers" have very few. This means that the difference is very important when something goes wrong. The category you belong to will effect what your landlord can do, what you can do about it and where you can get help.

Unlike most other states in Australia, in NSW there is still no specific Act or Tribunal which covers boarders and lodgers. Most rights come from the written or spoken agreement you have with your landlord.

This guide is intended as a general outline of the various laws that cover boarders & lodgers. It explains different ways to resolve legal problems. It is always best to get advice about your own situation. See the contacts list on **page 24** for a list of free legal advice services and websites where you can get further information.

### 1.1 Tenants

Tenants rights are listed in the *Residential Tenancies Act 2010* (NSW) (*the Act*). The Act defines who is a tenant and whether or not you can enforce your rights in the Tenancy Division of the Consumer, Trader and Tenancy Tribunal (CTTT). It is a new law which started on 31st January 2011. It will take some time for the Act to be interpreted by the CTTT.

Most people who rent houses and flats are tenants and have a Residential Tenancy Agreement. What your agreement is called does not always determine whether you are a tenant or not. Every situation is different so you should always get advice from your local Tenants' Advice & Advocacy Service to work out if you are covered by the *Residential Tenancies Act 2010*.

**TIP:** For information on your rights as a tenant see the factsheets on the Tenants' NSW Website at [www.tenants.org.au](http://www.tenants.org.au)

### 1.2 Boarders and lodgers

The Act does not protect your rights if you are a boarder or lodger (s 8(1)(c) of the Act).

Traditionally boarders and lodgers live in buildings where the landlord (or caretaker living there) keeps control of the place. Boarders receive meals as part of their agreement while lodgers do not. Many modern living arrangements are classified as boarding or lodging. These include sharing a house with the owner or caretaker, living in a university college, staying above a pub or paying for a serviced apartment.

The flowchart on **page 6** may help you to work out if you are a tenant or a boarder or lodger.

If you are not sure, you can ask the CTTT whether you are a tenant or not (s 11 of the Act). You should get advice from a Tenants' Advice Service on your situation (see **Contacts** on **page 24**).

### 1.3 Caretakers are tenants

A caretaker in a boarding house is someone who lives at the property and looks after the place for the owner. For example they may collect the rent, do the cleaning or control who moves into the place. Caretakers who live in the boarding house where they work are tenants (s 9 of the Act).

### 1.4 Share housing and sub-tenants

Many people live in a flat or house with other people. Usually there is only one tenancy agreement with the owner. In some cases the tenants will be co-tenants and in other cases they will be head-tenants and sub-tenants which are all covered by the Residential Tenancies Act 2010 (NSW). However, some people living with a head-tenant could be classified as a boarder or lodger.

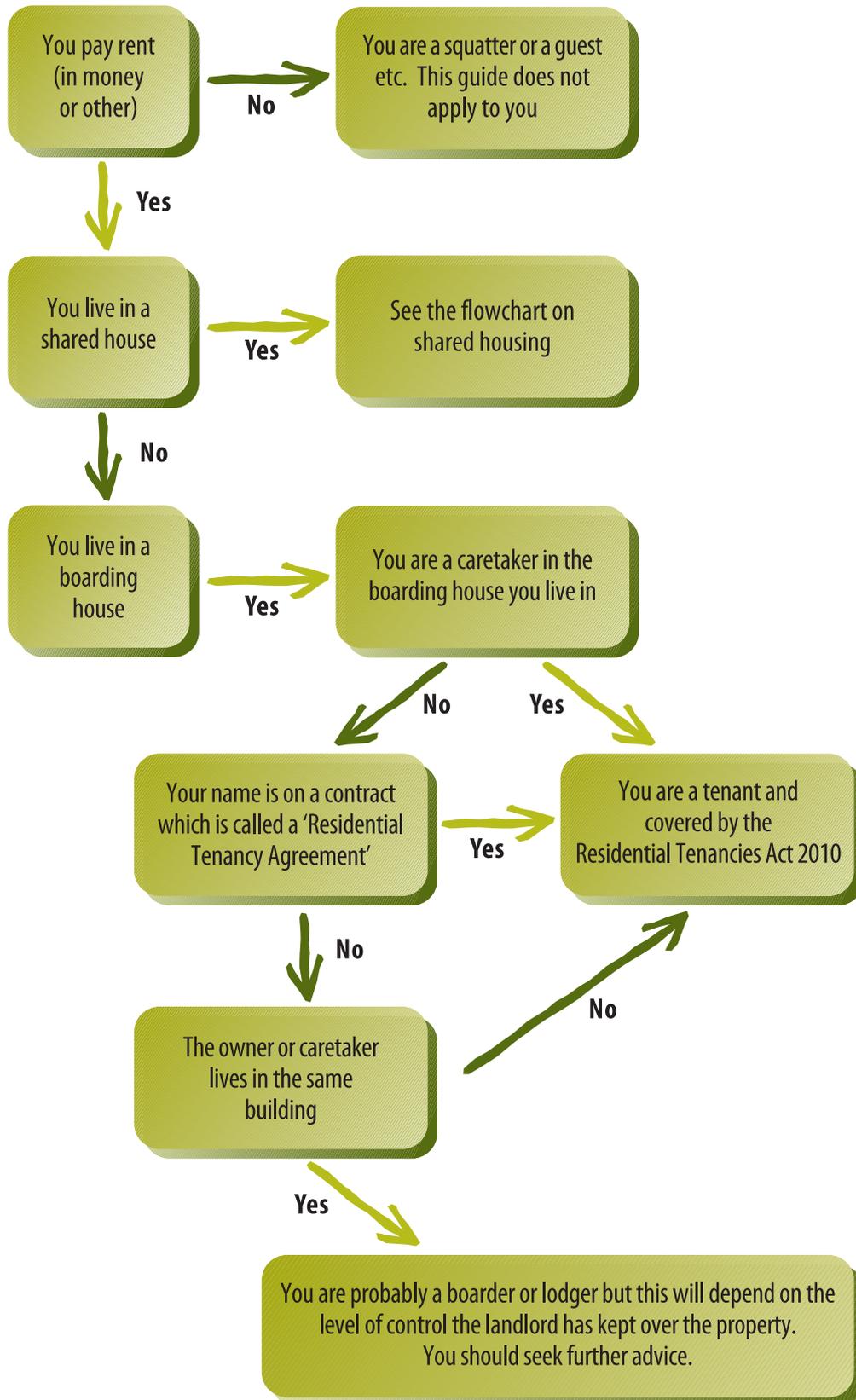
The new Residential Tenancies Act 2010 (NSW) has changed the laws about share housing. People living with another tenant (who is on the lease), are not covered under the Act unless they have a written Residential Tenancy Agreement with that tenant. If you are not covered by the Act, you may be covered under the Landlord and Tenant Act 1899 (NSW), or you may be a boarder or lodger, depending on your individual circumstances.

Current as at June 2011

The flowchart on page 7 may help you to work out what your legal position is. For more information see the *Share Housing Survival Guide* online ([www.rlc.org.au/sharehousing](http://www.rlc.org.au/sharehousing)) or call your local Tenants' Advice Service (see [www.tenants.org.au](http://www.tenants.org.au) for your local service).

### 1.5 Flowcharts to help work out your legal status

**Table 1 How to work out your legal status in a boarding house**





## 2. Boarders & Lodgers - General Information

### 2.1 Finding a place

Many rooms in boarding houses are advertised under the **Rent** section of real estate websites such as [www.domain.com.au](http://www.domain.com.au) or [www.realestate.com.au](http://www.realestate.com.au). While these websites also have a section for **Share Accommodation**, these are usually people looking for flatmates to move into the flat they are already renting.

Often your local council will have a list of boarding houses that are registered with them (this is different to 'licensed' boarding houses - see **Section 4, Boarders with Disabilities** on page 23). Your local Neighbourhood Centre or Tenants' Advice Service may also have a list of local boarding houses (see **Contacts** on page 24).

If you are in urgent need of housing you can ask your local Housing NSW office to give you some emergency accommodation. You can also call the Homeless Persons Information Line on 1800 234 566 or 9265 9081 for referrals to emergency accommodation.

You may also be eligible to apply for public or community housing. Contact Housing NSW or your local Tenants' Advice Service for more information (see **Contacts** on page 24).

### 2.2 Before you move in

Some people prefer boarding or lodging because you need less money up-front than for a tenancy, it can be short term and is available to people with bad tenancy records. If you know you are signing up to board or lodge, you should:

- ◆ Decide what type of accommodation suits your needs and whether you want the landlord to provide you with meals and/or to clean your room.
- ◆ Work out how long you want to live there.
- ◆ Inspect the rooms and common areas you will be using before deciding to move in.

#### Ask yourself these questions:

- ◆ How much is the rent?
- ◆ Does the rent cover the cost of utilities such as electricity, gas, water or telephone?
- ◆ If the rent does not cover the cost of utilities, how will I be charged for them?
- ◆ Which services does the landlord provide and how much extra will they cost? Services provided by the landlord might include providing linen, laundry, cleaning or meals.
- ◆ If I have a special need for medical assistance or require a special diet, will these be provided and what will it cost me?
- ◆ Will there be a fee if I leave after only a short time?
- ◆ How much notice do I need to give if I decide to leave, and how much notice will I receive if the landlord asks me to leave?
- ◆ Are there any rules about visitors, noise, hours of entering and leaving, use of common areas, parking or use of the garden?
- ◆ Do the rules of the house suit my lifestyle and me?
- ◆ Do I have to pay a bond or other fees?
- ◆ How much rent do I have to pay in advance?

**TIP:** Read any agreement carefully, ask for any changes you want to be made and ask for a copy of the agreement. Always keep a copy of any written agreement.

## 2.3 Money

### Bonds

Boarders and lodgers usually pay some sort of bond or deposit. If you pay a bond, ask for a receipt that shows what the payment is for. The receipt should include the amount you paid, the address, that it is for bond and what the bond will cover. What your bond covers will depend on what you and the landlord agreed to. For this reason, it will help you to get your bond back if your receipt states what the bond will cover. There is no set amount of bond that landlords can charge boarders or lodgers, and they do not need to be lodged with NSW Fair Trading (although they can be). For information on getting your bond back, see **Bond Claims** on page 18.

### Receipts

You should always ask for a receipt whenever you pay money or rent to the landlord or caretaker. Boarders and lodgers do not have a legal right to rent receipts unless you have an agreement to be given receipts. If the landlord refuses to give you a receipt, keep a record (a list of dates and payments). It is best to pay in a way that you can track your payments, such as by bank deposit, transfer or personal cheque. Even a money order from the post office is better than cash. Always keep a record and keep the stubs of any cheques or money orders paid. These records will be very helpful if you have a disagreement.

**TIP:** *Get a receipt for any payments and keep those receipts.*



### SAMPLE RECEIPT

<i>Date:</i>	<i>1 January 2010</i>		
<i>Received from:</i>	<i>Mary Young</i>		
<i>Property:</i>	<i>Room 12, 1 New Street, Sydney</i>		
<i>Weekly rent:</i>	<i>\$110.00</i>		
<i>Amount paid:</i>	<i>\$440.00</i>		
<i>Payment type:</i>	<i>Cash</i>		
<i>For:</i>	<i>2 weeks rent (\$220) and 2 weeks bond (\$220)</i>		
<i>Rent paid from:</i>	<i>1-1-10</i>	<i>Paid to:</i>	<i>15-1-10</i>
<i>Received by:</i>	<i>Joe Blow</i>		
<i>Signed:</i>	<i>JXB</i>		

### Rent increases

There are no rules for landlords about rent increases for boarders or lodgers. If you have a written agreement you should check it first. If the agreement is for a set period of time, then during that time, the rent can only be increased if you agree, or if it is already written into the agreement. If you do not have an agreement for a set period of time, then increases are a matter for you and the landlord to negotiate. If you do not have a

written agreement, it may be harder to prove that you had an agreement for a set period of time.

You can try to get an agreement in writing that states what the increase will be and that there will be no further increases for a specific period of time. Otherwise, you can write down any agreement that you make and send a copy to the landlord. If you can, get the landlord to sign the letter or document that states what your agreement is.

**SAMPLE AGREEMENT***Date*

I, [your name] of [address] and [landlord's name] agree that the rent will increase by \$\_\_\_\_\_ per week, starting from [date]. This means that the rent is \$\_\_\_\_\_ per week from \_\_\_\_\_ [date].

This rent will be fixed for at least 6 months and there will be no further rental increases before [date].

[Your signature] \_\_\_\_\_ [Landlord's signature] \_\_\_\_\_

[Print your name] \_\_\_\_\_ [Print landlord's name] \_\_\_\_\_

**2.4 Rights and responsibilities**

Boarders and lodgers often ask whether they are entitled to clean rooms, working power points, control over their rooms or locks on their doors. The answer is usually no unless it is in your agreement with the landlord. But in some circumstances you may be able to ask your Local Council to inspect the property and order that things be done for it to meet minimum legal standards - see **page 20** for more information.

**Australian Consumer Law**

The new *Australian Consumer Law* says that your landlord (that is renting the rooms as a business) automatically gives you certain guarantees when they enter into an agreement with you. One guarantee is that the accommodation is reasonably fit for the purpose of lodging or boarding.

If the lodgings are below a reasonable standard for low cost accommodation, you can ask them to fix the problem. You may be able to ask for compensation if you suffer any loss because the place is not suitable to live in.

In some circumstances, you may be able to end your agreement with the landlord and ask for a refund of some of the money you have paid.

These laws may not apply in sharehousing unless you can argue the head tenant that lives there is renting out the rooms as a business.

(If the head tenant does not live there then you are probably covered by the *Residential Tenancy Act 2010* like other tenants).

See **Disputes and Remedies** on **page 14** if you need to take the matter to the Tribunal or Court. Make sure you seek legal advice before you decide to take any action (see **Contacts** on **page 24**).

**Your agreement**

As a boarder or lodger, most of your rights and responsibilities depend on the agreement you signed or made with your landlord. If your agreement is only spoken then it can be hard to prove what you agreed.

**2.5 Privacy**

In Australia there is no general right to privacy. However there are some specific laws, such as the law against recording conversations without the other person knowing. Some breaches of privacy might be crimes that can be reported to the police.

However, in a boarding or lodging agreement the landlord keeps control of the property. This means that they can come in with no notice for example to clean the rooms or collect the rent. If you feel your privacy has been invaded in an unreasonable way you can ask for advice from a solicitor at a Community Legal Centre or the Homeless Persons Legal Service (see **Contacts** on **page 24**).

If you think you may have been put on a 'bad tenant database' you can find out more information from factsheet 19 at [www.tenants.org.au](http://www.tenants.org.au) or contact your local Tenants' Advice Service for advice (see **Contacts** on page 24).

## 2.6 Repairs and maintenance

### How do I get repairs done?

As a boarder or lodger, you have an agreement to pay rent in return for the room and use of shared areas. If things get run-down or stop working, your landlord may no longer be keeping his or her agreement.

Before taking action, remember that you may not have a long-term agreement. If your landlord does not want to do the repairs, they can simply ask you to leave in accordance with the terms of the agreement. However if things are breaking down then you might not be getting your money's worth anyway.

If you decide to take action you should first speak with the landlord or caretaker. If nothing happens then follow up with a letter listing what repairs need to be done. Don't stop paying rent if you want to stay living in the property, as the landlord can evict you for being behind.

The *Australian Consumer Law* provides that a landlord (that is renting out the rooms as a business) must guarantee that the premises are fit for the purpose of boarding or lodging. If the place is below a reasonable standard for low cost accommodation then you can ask the landlord to fix the problems. You may also be able to ask for some of the money back that you have paid. This is only the case if your landlord is in trade or business so may not apply to an occupant in sharehousing. (See **Disputes and Remedies** on page 14 if you need to take the matter to the Tribunal or Court.)

Your Local Council may also be able to inspect the property and demand that certain works be done, for example if there is a problem with pests or bedbugs or if common areas are not kept clean. See **Repairs and Pests** on page 19 for further information.

**TIP:** *Keep copies of all letters, a diary of your conversations with the landlord and print outs of all emails.*

### Smoke alarms

Boarding houses must have smoke alarms. The location of smoke alarms depends on the type and size of the building. For details of these see the factsheet on smoke alarms at [www.tenants.org.au](http://www.tenants.org.au) or [www.planning.nsw.gov.au/smokealarms/pdf/smoke\\_alarms\\_shared\\_factsheet2.pdf](http://www.planning.nsw.gov.au/smokealarms/pdf/smoke_alarms_shared_factsheet2.pdf).

### What if the property is unsafe?

If the place is not safe, the landlord could be responsible for any injuries that happen. For example if water is leaking into electricity, the roof is caving in or there is asbestos. Write to the landlord or caretaker and tell them that you are worried about your safety or the safety of other residents or guests.

If the landlord does not fix the problem you can contact your Local Council for help in getting repairs done.

You can tell the landlord that under the *Australian Consumer Law* the accommodation must be of a reasonable standard for the purpose of lodging or boarding. If the situation is not safe, you may have a right to have the problems fixed, end your agreement with the landlord and / or obtain compensation from them. This might not apply to occupants in share housing.

See **repairs** in the **Disputes** section on page 19 for more information.

## Injury

If you are injured due to a problem with the property you can get further advice from a Community Legal Centre (see **Contacts** on page 24). They will be able to refer you to a personal injury specialist. Make sure you get a doctor's letter at the time you are injured.

## Violence and harassment

If there is violence or harassment you should call your local police station. If it is an emergency call 000. You can get advice from a Community Legal Centre (see **Contacts** on page 24). They can also refer you to domestic violence advice and support services.

## 2.7 Eviction and moving out

### You want to leave

You should give your landlord a letter to let them know when you are leaving. Remember to keep a copy.

Check your agreement for how much notice you have to give. If it doesn't say the amount of notice, then you probably don't need to give any notice. If you have paid a week or two in advance then you can leave before the day you've paid up to, but you won't be able to get back the rent you've paid for the time after you've left.

If you have an agreement for a fixed period of time check if it has any charges for leaving early. You should always talk with your landlord to try and come to an agreement. Any charges should be fair and reasonable, as the landlord may not recover more money from you than he or she has lost by your moving out early. For example, you may be able to get the charges lowered by helping to find someone to move in sooner. See also '**Unfair Agreements**' on page 13.

Make a time with the landlord time to do a check of your room and arrange for the return of any bond you are owed.

## Eviction

Though the legal position may be unclear, from a practical perspective boarders and lodgers can be evicted with very little notice. If you have a written agreement you should check it to see if they are giving you the correct amount of notice. If there is no agreement about notice, then the landlord should let you stay until the day that you have paid rent up to.

For more information see **Eviction** in the **Disputes** section on page 21.

### Can the landlord keep my stuff?

Try and take everything with you especially things that are valuable to you, but not worth money, like photos and important papers.

If the landlord is willing to return your things to you, but you have not yet collected them, then the landlord cannot just keep, sell or throw them out. They have to follow the rules in the *Uncollected Goods Act 1995* (NSW).

How a landlord can dispose of a boarder or lodger's goods depends on their value.

Value of goods	What the landlord must do
<b>Perishable goods</b>	Perishable goods are things that will not last long like food. The landlord has to tell you they are going to throw out the goods. They have to give you a reasonable time to pick them up then they can throw them out.
<b>Less than \$100</b>	The landlord must tell you that they are going to get rid of the goods. They must keep the goods for 28 days before they can throw them out.
<b>Between \$100 and \$500</b>	The landlord must write to you and anyone else who says they own the goods. They must keep the goods for 3 months after they write to you, then they can sell the goods by public auction or by private sale for a fair value. They must return any money they get to you, minus the costs of storage and sale.
<b>Between \$500 and \$5000</b>	The landlord must write to you and anyone else who says they own the goods. They must keep the goods for 6 months after they write to you. They must then publish a copy of the notice they sent to you in a daily newspaper circulating throughout NSW. They can sell the goods by public auction 28 days after the notice is published. They must return any money they get to you, minus the costs of storage and sale.
<b>Over \$5000</b>	Goods worth more than \$5000 can only be sold or thrown out with an order from the Local Court.

The landlord doesn't have to give you a notice if they cannot communicate with you or if they don't know the goods are yours. You should make sure that you give your landlord your contact details.

Any notice regarding uncollected goods must include certain information. For more information see [http://www.fairtrading.nsw.gov.au/Consumers/Buying\\_goods/Uncollected\\_goods.html](http://www.fairtrading.nsw.gov.au/Consumers/Buying_goods/Uncollected_goods.html).

If your landlord sells your things and gets less from them than they spent on the goods whilst they had them (such as for storing them) then they can recover the difference from you.

If you want to get your things back, then your landlord cannot just keep, sell or throw them out - even if you owe rent or other money.

If your landlord refuses to give your things to you, or has damaged or sold them or thrown them away, then your local police might be able to help you. If they cannot help you, then you may be able to apply to the CTTT or the Court to recover your goods or compensation for them. See **page 15** to understand which Court or tribunal to go to. See also **Uncollected Goods** on **page 20** if you need to take it further.

## 2.8 Unfair Agreements

There are laws about unreasonable agreements and sometimes a term in an agreement will not be legally valid. An example might be a large fine for paying your rent late. Another example might be a term that you can be evicted with no notice and for no reason despite having paid rent in advance. You could argue that the term in your agreement is not legal.

The *Contracts Review Act 1980* (NSW) allows the District or Supreme Courts to change an unfair agreement. It also allows the Local, District or Supreme Courts to refuse to enforce part or all of a contract if the contract is unfair.

The new *Australian Consumer Law* (within the *Fair Trading Act 1987* (NSW)) allows the Consumer, Trader & Tenancy Tribunal (or the Local Court, District Court or Supreme Court) to say a term of the agreement is not legal if it is unfair.

There is also case law about excessive fees and charges in agreements. So for example, if you are charged \$20 for each day your rent is late, and this \$20 doesn't reflect the actual cost suffered by the landlord, then you might not have to pay the fee.

You can get more advice about your agreement, and whether you can use these laws, from your local Community Legal Centre (see **Contacts** on page 24).

### 3. Disputes and remedies

#### 3.1 The Legal System

##### Where do I take my dispute?

As a boarder or lodger finding out where to take your complaint or dispute can be confusing. The following is a summary of the relevant courts and tribunals, including briefly what cases they take. Following the summary are specific sections for more detailed advice. Every person's situation is different and you should seek legal advice before commencing proceedings.

##### **Consumer, Trader and Tenancy Tribunal (CTTT) – General Division**

<b>Fee to apply</b>	\$36 for claims or disputes not exceeding \$10,000 (or no specific amount claimed); \$74 for claims or disputes between \$10,000 and \$30,000; \$191 for claims or disputes exceeding \$30,000. For people with a concession, pension or health care card, the fee for all applications is \$5.
<b>Requirement</b>	Your landlord is renting as a 'trade or business' (see 'If your landlord is in business' section on page 18).
<b>What types of orders</b>	<ul style="list-style-type: none"> <li>◆ to pay money</li> <li>◆ to not pay money</li> <li>◆ to do work, provide services, fix or replace faulty goods</li> <li>◆ to deliver or return goods</li> <li>◆ an order that a term in the agreement with your landlord is unfair and therefore not enforceable</li> <li>◆ in some circumstances, compensation under the <b>Australian Consumer Law</b> if the premises are not fit for the purpose of boarding or lodging - but seek legal advice before commencing proceedings</li> </ul>
<b>Time limits to apply</b>	3 years for most matters.

**Local Court**

<b>Fee to apply</b>	\$83 in Small Claims division (under \$10 000); \$205 in General division (under \$100,000 or \$60,000 for personal injury or death); as well as legal fees and the risk of paying the other sides costs.
<b>What types of orders</b>	<ul style="list-style-type: none"> <li>◆ if the landlord is running the premises as a business, orders under the Australian Consumer Law to recover damages (losses) if the premises are not fit for the purpose of (below a reasonable standard for) boarding or lodging</li> <li>◆ detained goods proceedings (compensation or recovery of your goods)</li> <li>◆ damages (compensation) for a breach of the agreement</li> <li>◆ debts, payment of money (return of rent or bond)</li> <li>◆ an order that a term in the agreement with your landlord is not enforceable</li> <li>◆ but not orders to repair or orders making somebody do something (except return goods)</li> </ul> <p>The Local Court cannot order that you receive more than \$100,000, or \$60,000 for personal injury or death.</p> <p>Every claim will be different. Please seek legal advice before commencing proceedings</p>
<b>Time limits to apply</b>	<p>Various time limits including:</p> <ul style="list-style-type: none"> <li>◆ 6 years for debts and detained goods</li> <li>◆ 2 years for orders that a term in your agreement with your landlord not be enforced</li> </ul>

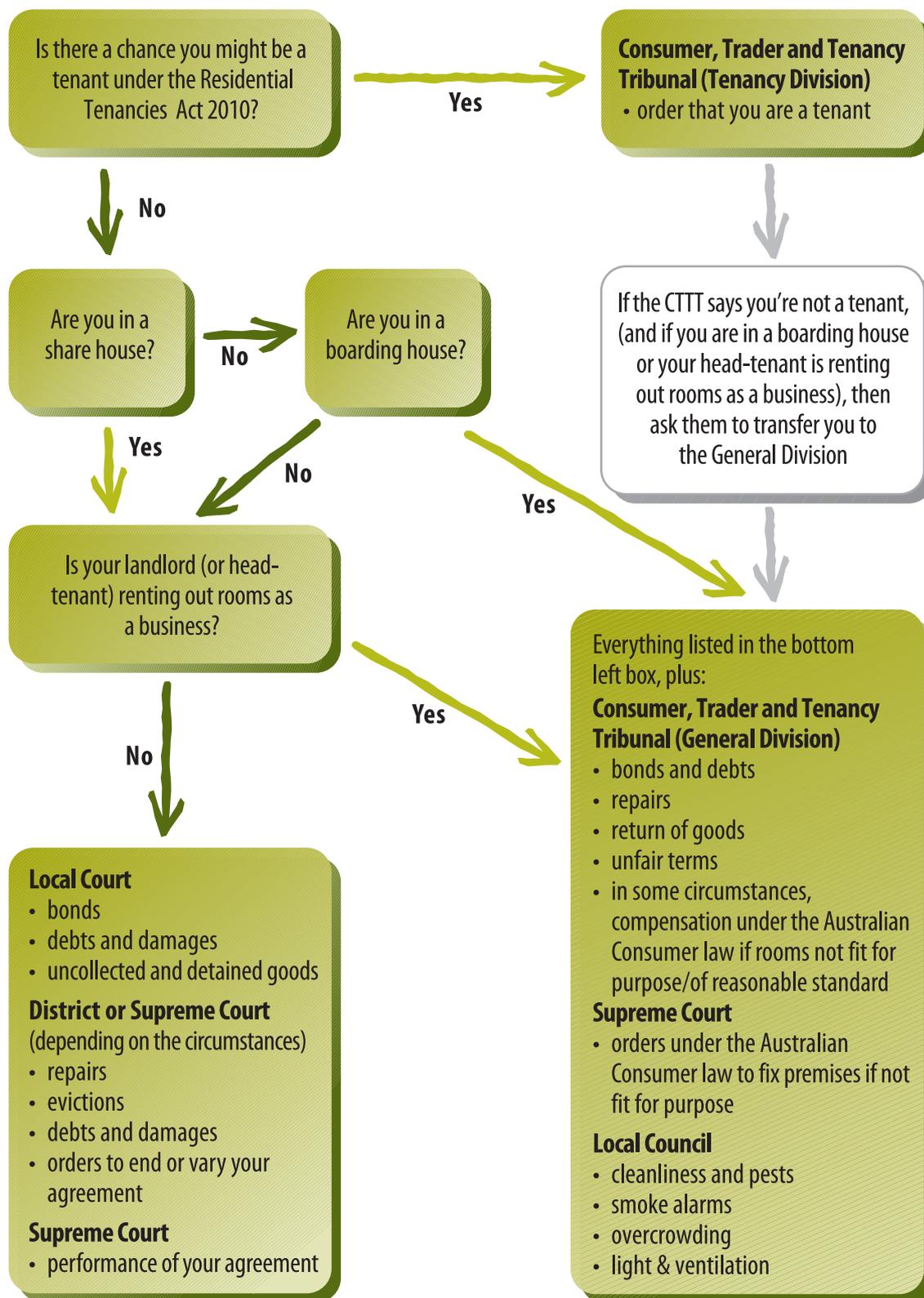
**District Court**

<b>Fee to apply</b>	\$555 to commence proceedings; \$594 to allocate a date for hearing; as well as legal fees and the risk of paying the other sides costs.
<b>What types of orders</b>	<ul style="list-style-type: none"> <li>◆ orders to end or vary your agreement</li> <li>◆ a claim for money or damages (compensation)</li> <li>◆ in certain circumstances, an injunction to stop your landlord from doing something</li> <li>◆ if the landlord is running the premises as a business, orders under the Australian Consumer Law to recover damages if the premises are not fit for the purpose of (below a reasonable standard for) boarding or lodging</li> </ul> <p>The District Court cannot order that you receive more than \$750,000.</p> <p>Every claim will be different. Please seek legal advice before commencing proceedings.</p>
<b>Time limits to apply</b>	<ul style="list-style-type: none"> <li>◆ No time limit applies to a claim for equitable remedies but must not delay in applying</li> <li>◆ 2 years for contract review</li> </ul>

**Supreme Court**

<p><b>Fee to apply</b></p>	<p>\$894 in common law and equity divisions.                  \$1,786 to allocate a date for hearing.                  \$712 per day for the second to fourth days of hearing.                  \$1,184 for the fifth to ninth days of hearing.                  \$2,384 for the tenth and following days of hearing.                  Plus legal fees and the risk of paying the other side's costs.</p>
<p><b>What types of orders</b></p>	<ul style="list-style-type: none"> <li>◆ if the landlord is running the premises as a business, orders under the Australian Consumer Law to fix the premises and/or recover damages if the premises are not fit for the purpose of (below a reasonable standard for) boarding or lodging</li> <li>◆ equitable remedies (such as an injunction to stop doing something)</li> <li>◆ specific performance of your agreement (such as orders to repair)</li> <li>◆ orders to vary your agreement or declare it void</li> <li>◆ any other orders</li> </ul>
<p><b>Time limits to apply</b></p>	<ul style="list-style-type: none"> <li>◆ No time limit applies to a claim for equitable remedies but must not delay in applying</li> <li>◆ 6 years for specific performance of your agreement</li> <li>◆ 2 years for contract review</li> </ul>

Table 3 Which Court or Tribunal?



### 3.2 If you might be a tenant (Tenancy Division of the CTTT)

If you think you could be a tenant then you can apply to the Tenancy Division of the Consumer, Trader & Tenancy Tribunal (CTTT). You can ask for an order that you are a tenant (s 11 *Residential Tenancies Act 2010*).

Your local Tenants' Advice Service can help you to prepare some reasons why you are a tenant (see **Contacts** on page 24). Your local Tenants' Advice Service can also give you a CTTT Kit to help you with what happens on the day and what types of evidence to take with you.

If the Tribunal decides you are not a tenant, but your landlord is in 'trade or business' then you can ask the Tribunal to transfer your case to the General Division (see next section).

### 3.3 If your landlord is in business (General Division of the CTTT)

If your landlord or head-tenant is renting out rooms like a business you can use the *Consumer Claims Act 1998* (NSW). An example might be if the landlord is renting out a large subdivided terrace as a boarding house. Another example might be a head-tenant who rents out lots of flats and makes money by subletting them (but if the head-tenant doesn't live there then you are probably a tenant).

Generally speaking, if your landlord is renting out more than one or two rooms, they could be in 'trade or business'. You can make a claim to the General Division of the CTTT for most types of money or repairs matters. You can also apply for your goods to be returned.

In some circumstances the CTTT may also be able to order that money be paid to you because the place was below a reasonable standard for the purpose of low cost accommodation (*Australian Consumer Law*). See for example *Stephen Doran v Alfred Lia, 20 April 2011 (GEN 10/57830)*.

You can download an application form for the General Division of the CTTT, or apply online, at [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au). For more advice contact your local Community Legal Centre or Tenants' Advice Service (see **Contacts** on page 24).

**TIP:** *All places of business are obliged to have their Australian Business Number (ABN) displayed. If there is nothing displayed at your residence, then you can check with the Office of Fair Trading to see if your landlord has an ABN. You can also check if your landlord has registered the business by doing an on-line search at [www.abr.business.gov.au](http://www.abr.business.gov.au) or [www.asic.gov.au/asic/asic.nsf](http://www.asic.gov.au/asic/asic.nsf)*

### 3.4 Some specific issues

#### Bond Claim

Your bond is usually paid to the landlord to cover any damage you do to the property while you stay there, a cleaner if you have left the property unclean, or money you owe such as unpaid rent. It is not usually meant to cover general maintenance, repairs or damage that is normal wear and tear on the property. If you are leaving the premises in good condition your landlord should normally return your bond.

If your landlord refuses to return your bond:

- ◆ If the bond is held by NSW Fair Trading then you can claim your bond directly by filling out the 'Claim for Refund of Bond Money' form. This can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).
- ◆ If you might be a tenant you can apply to the Tenancy Division of the Consumer, Trader & Tenancy Tribunal (CTTT) for an order to refund your bond (see 'If you might be a tenant' on page 18).

- ◆ If your landlord is renting out the place as a business you can apply to the General Division of the CTTT for an order to pay you money (see '**If your landlord is in business**' on page 18).
- ◆ If neither of these apply then you would need to apply to the Small Claims Division of the Local Court. The first step is to send the other party a letter of demand, which is a request for the money to be paid within a certain time (for example, 14 days). It usually states that if the money isn't paid by that date you intend to take legal action. See **Appendix 2** 'Sample Letter of Demand' on **page 26** for an example of how to write this letter.
- ◆ You can start a legal action to recover money by filing a Statement of Claim at your nearest Local Court Registry. Consult your local Community Legal Centre for advice and assistance in filling out a Statement of Claim. You should also ask them about the legal costs involved in starting this type of action.
- ◆ You can also use the Law Assist website which has a guide to Courts and the legal process at [www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll\\_lawassist.nsf/pages/lawassist\\_index](http://www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll_lawassist.nsf/pages/lawassist_index).
- ◆ If your landlord is renting the place as a business you can apply to the General Division of the CTTT for an order to do work or provide services (see '**If your landlord is in business**' on page 18).
- ◆ If neither of these apply then in some circumstances you can apply to the District Court for an order to do repairs and in other circumstances you will need to apply to the Supreme Court of NSW. You would generally need to show a written agreement with a specific term to do repairs. You would also need to have special reasons why an order for compensation is not adequate. You should seek advice about your case and the potential costs from your local Community Legal Centre before you decide to take action (see **Contacts** on page 24).

### **Local Council**

Many boarding houses come under the definition of 'Class 3 Buildings' under the Building Code of Australia. If yours does then you can ask your Local Council to enforce the standards under the **Local Government (General) Regulation 2005 (NSW)**, Reg 83 and Schedule 2 (see the list of standards on page 20).

## **Repairs and Pests**

### **Tribunals and Courts**

Before taking action, remember that neither the Tribunal nor the Local Court can prevent your **landlord from evicting you in accordance with the terms of the agreement**.

- ◆ If you might be a tenant you can apply to the Tenancy Division of the CTTT for an order to do repairs (see '**If you might be a tenant**' on page 18).

**GENERAL CLEANLINESS**

- ◆ All parts of the place (including furniture, fittings, beds and linen) must be kept in a clean and healthy condition, and free from pests or bugs.
- ◆ Bins must be kept covered and all waste must be put in appropriate bins.

**FURNITURE AND FITTINGS**

Furniture and fittings must be provided and kept in good repair.

**KITCHEN FACILITIES**

- ◆ Facilities and utensils for storing or cooking food must be kept in a clean and healthy condition, in good repair, free from foul odours and, as far as possible, free from dust, flies, insects and pests.
- ◆ The kitchen floor must have a surface that doesn't allow water or damp to get through.

**LIGHT AND VENTILATION**

- ◆ The boarding house must receive adequate light and air flow..
- ◆ All dividing walls used in dormitories and rooms must be properly constructed and provide adequate airflow.

**OVERCROWDING**

- ◆ The Council sets the maximum number of people who are allowed to live in each bedroom, dormitory and in the whole premises. This maximum number must be obeyed.
- ◆ For short-term accommodation, each room or cubicle must usually have 2 square metres for each person sleeping in it. If the accommodation is for more than 28 days, then each room or cubicle must usually have 5.5 square metres for each person sleeping in it.

Your Local Council is able to make orders about the above standards (s 124 of the *Local Government Act 1993* (NSW)). Orders can be made against the owner, manager or occupier. For example, if these orders are made to preserve healthy conditions, they can be made against the owner or occupier of premises. However, if the property is unsafe or uninhabitable, the Council can also make orders that the building be closed down. In addition, some landlords might decide to close the boarding house rather than do the repairs.

**Uncollected goods or detained goods**

If you try to get your things back and your landlord refuses, and the police cannot help then you can apply to a Court or Tribunal for them to be returned or for compensation. Don't forget to write to your landlord about it first and keep a copy of your letter.

On the other hand, your landlord can dispose of your goods if you do not collect them, by following the rules in the *Uncollected Goods Act 1995*. See 'Can my landlord keep the stuff?' in the **Eviction and Moving Out** section on page 12.

If the landlord didn't follow the rules and still has your stuff or your things were thrown out, then you might be able to apply for compensation or for your goods to be returned. It might

be difficult to prove what goods you had and how much they were worth.

- ◆ If you might be a tenant you can apply to the Tenancy Division of the CTTT for an order to return your goods and / or for compensation (see 'If you might be a tenant' on page 18).
- ◆ If your landlord is renting the place as a business you can apply to the General Division of the CTTT for an order to return goods and / or for an order to pay you money (see 'If your landlord is in business' on page 18).
- ◆ If neither of these things apply then you can apply to the Local Court for an order to return goods and / or for an order to pay you money. To start this process you lodge a Statement of Claim in the Small Claims Division (for claims under \$10,000).

You should ask for advice about your case and the potential costs from your local Community Legal Centre before you decide to take action (see **Contacts** on page 24). You can also use the Law Assist website which has a guide to Courts and the legal process at [www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll\\_lawassist.nsf/pages/lawassist\\_index](http://www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll_lawassist.nsf/pages/lawassist_index).

### **Eviction**

A landlord will usually be able to give you a notice at any time that they are terminating your agreement, without a reason. Usually you will only be able to stay until the day you have paid rent up to. Unless you have an agreement or can prove that you have some right to stay after that then there may be nothing you can do.

- ◆ If you might be a tenant you should warn your landlord about the penalty for an illegal eviction (up to \$22,000) and ask them to follow the rules in the *Residential Tenancies Act 2010* (NSW), (see 'If you might be a tenant' on page 18).

You should seek advice from your local Tenants' Advice Service (see **Contacts** on page 24).

- ◆ If your landlord is renting the place as a business you can apply to the General Division of the Consumer, Trader & Tenancy Tribunal. You can only ask to stay longer if you have already paid rent for the period you want to stay or if your agreement says so. You would also need to show you have done nothing that goes against your agreement.
  - ◇ To stay you could ask for an order to provide goods or services.
  - ◇ To get your rent back you can ask for an order to pay you money.
- ◆ If neither of these apply then you can apply to the Local Court for an order to return overpaid rent or for compensation for evicting you (if they did not follow your agreement). To try to stop an eviction you would need to apply to the Supreme Court of NSW, or in some circumstances, to the District Court.

You should ask for advice from your local Community Legal Centre (see **Contacts** on page 24). You can also use the Law Assist website which has a guide to Courts and the legal process at [www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll\\_lawassist.nsf/pages/lawassist\\_index](http://www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll_lawassist.nsf/pages/lawassist_index).

### **TIP: Police involvement**



*The police should not be called to evict you. If the police are called you should let them know that it is a civil matter and that the landlord does not have any orders to evict, either from the CTTT or the Court.*

## Redevelopment

If you are being evicted because the landlord wants to change the use of the premises (for example from a boarding house to a commercial building), you can contact the planning section of the Local Council to see if the landlord has permission to redevelop. If they do not, ask the council to investigate. The Council may also be able to refuse permission if the change of use will mean less low-cost housing in the area. Many local councils have information on their websites about development applications and how to lodge submissions and objections.

Boarding houses in certain areas of NSW come under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (NSW). Redevelopment of boarding houses may come under section 50 of that Act and may assist you to argue why it should not be demolished or redeveloped. Your local Tenants' Advice Service or Community Legal Centre may be able to advise or assist you further on this (see **Contacts** on page 24).

### 3.5 Factors to consider when going to court

If you can't take your landlord to the CTTT, going to court can be an expensive way to get money back or enforce other rights. It will be important for you to consider the cost involved, such as fees that will not be refunded if you lose the case. You may also be ordered to pay the costs of the landlord if you lose the case.

The process can take a lot of time and you are not guaranteed that you will get your money back. You will have to be able to prove your claim if it is disputed by your landlord. This can be difficult in situations where you have no written records of agreements or money you have paid and what the money was paid for. If you get an order from the Court that the landlord pay you money, and they don't pay it, then you will have to take further action or pay a company to have it enforced.

## 4. Boarders & lodgers with disabilities

Some boarding houses specialise in aged or disabled care. If two or more people with a disability, who require supervision or support to access support and other services in the community, live in the same boarding house it must be licensed under the **Youth and Community Services Act 1973** (NSW). This means Ageing, Disability and Home Care (ADHC) (part of the NSW Department of Family & Community Service) is responsible for ensuring minimum standards of housing and that facilities are provided for the health, comfort, safety and proper care of the people living in the boarding house.

These boarding houses must fulfil specific licence conditions, covering:

- ◆ *the variety, quality and quantity of food served*
- ◆ *the maintenance of records about giving certain medications*
- ◆ *the giving and supervision of medication and access to health care*
- ◆ *staffing including numbers, suitability and competency*
- ◆ *residents' minimum clothing requirements*
- ◆ *the conditions under which residents take on domestic duties*
- ◆ *access to storage space*
- ◆ *requirements not to subject residents to abuse or neglect and to protect residents' financial affairs*
- ◆ *retaliation in the event of a resident complaining*
- ◆ *residents' access to advocacy services, friends and family*

If you live in a licensed boarding house, or one you think should be licensed, and have a problem, you should contact ADHC on 8270 2000.

If ADHC are unable or unwilling to resolve your complaint, you can contact the NSW Ombudsman on 9286 1000. If the boarding house is licensed, the NSW Ombudsman can send an Official Community Visitor to interview you and the landlord, as well as to inspect the premises. This may assist the Ombudsman in resolving the complaint.

Complaints about discrimination (for example based on disability) and breaches of human rights can be made to the Australian Human Rights Commission. You can contact them on 9284 9888. You can also seek advice on this from your local Community Legal Centre (see **Contacts** on page 24).

You can also contact People with Disability Australia (PWD) on 9370 3100 and speak to an advocate who may be able to assist you to speak with ADHC or Ombudsman. PWD offers free individual and group advocacy support to people with disability across NSW. It also runs a Boarding House Advocacy Project for people with disability in NSW who live in licensed boarding houses.

In addition, the information in the rest of this kit is also applicable to licensed boarding houses.

## Contacts for Further Advice and Information

Ageing, Disability and Home Care	8270 2000
Australian Human Rights Commission	9284 9888
Community Justice Centre	9228 7455
Consumer Trader & Tenancy Tribunal Registry	1300 135 399
Department of Ageing, Disability and Home Care	8270 2000
Homeless Persons Information Line	1800 234 566
	9265 9081
NSW Ombudsman	9286 1000
People with Disability Australia	9370 3100
Renting Services (Rental Bond Board)	13 32 20

## Tenants Advice and Advocacy Services

Inner Sydney	9698 5975
Eastern Area	9386 9147
Inner West	9559 2899
Northern Area	9884 9605
Southern Sydney	9787 4679
South West	1800 631 993
Western Sydney	9413 2677
See full list at <a href="http://www.tenants.org.au">www.tenants.org.au</a>	

## Community Legal Centres

Redfern	9698 7277
Inner City	9332 1966
Kingsford	9385 9566
Macquarie	8833 0911
Marrickville	9559 2899
Southwest Sydney	9601 7777
See full list at <a href="http://www.clcnsw.org.au">www.clcnsw.org.au</a>	

## Useful Websites

### Advice and Information

Tenancy Factsheets and Sample Letters	<a href="http://www.tenants.org.au">www.tenants.org.au</a>
Credit & Debt Factsheets	<a href="http://www.cclcnsw.org.au">www.cclcnsw.org.au</a>
Lawlink	<a href="http://www.lawlink.nsw.gov.au">www.lawlink.nsw.gov.au</a>
Law Access	<a href="http://www.lawaccess.nsw.gov.au">www.lawaccess.nsw.gov.au</a>
Law Assist	<a href="http://www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll_lawassist.nsf/pages/lawassist_index">www.lawlink.nsw.gov.au/Lawlink/lawaccess/ll_lawassist.nsf/pages/lawassist_index</a>
Share Housing Survival Guide	<a href="http://www.rlc.org.au/sharehousing">www.rlc.org.au/sharehousing</a>

### Courts and Tribunals

Consumer, Trader & Tenancy Tribunal	<a href="http://www.cttt.nsw.gov.au">www.cttt.nsw.gov.au</a>
Local Courts	<a href="http://www.lawlink.nsw.gov.au/lc">www.lawlink.nsw.gov.au/lc</a>
Supreme Court NSW	<a href="http://www.lawlink.nsw.gov.au/sc">www.lawlink.nsw.gov.au/sc</a>

### Legislation

Austlii	<a href="http://www.austlii.edu.au">www.austlii.edu.au</a>
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### Other

Ageing, Disability and Home Care	<a href="http://www.adhc.nsw.gov.au">www.adhc.nsw.gov.au</a>
Australian Human Rights Commission	<a href="http://www.hreoc.gov.au">www.hreoc.gov.au</a>
Community Justice Centres (Free Mediation)	<a href="http://www.cjc.nsw.gov.au">www.cjc.nsw.gov.au</a>
NSW Land & Housing Corporation	<a href="http://www.housing.nsw.gov.au">www.housing.nsw.gov.au</a>
[Housing Pathways website]	<a href="http://www.housingpathways.nsw.gov.au">www.housingpathways.nsw.gov.au</a>
NSW Ombudsman	<a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>
People with Disability Australia	<a href="http://www.pwd.org.au">www.pwd.org.au</a>

## Appendix 1: Homeless Persons' Legal Services

Legal advice is provided free of charge to those who are homeless or at risk of homelessness (including boarders & lodgers) at the following weekly Legal Advice Clinics.\*

<b>Monday</b>	10:00am – 12 noon	The Station Ltd 82 Erskine Street, Sydney
<b>Monday</b>	10am – 12 noon	Wayside Chapel 29 Hughes Street, Potts Point
<b>Tuesday</b>	11:00am – 1:00 pm	Matthew Talbot Hostel 22 Talbot Lane, Woolloomooloo
<b>Tuesday</b>	12:30pm – 1:30 pm	Norman Andrews House 77 Roscoe Street, Bondi Beach
<b>Wednesday</b>	11:30am – 1:00pm	Parramatta Mission 119 Macquarie Street, Parramatta
<b>Wednesday</b>	12:30pm – 2:00pm	Salvation Army Street level Derby Lane (off Albion St), Surry Hills
<b>Thursday</b>	1:00pm – 3:00pm	Edward Eagar Lodge 348a Bourke Street, Darlinghurst
<b>Thursday</b>	12:00pm – 2:00pm	Vincentian House 361 Crown Street, Surry Hills
<b>Friday</b>	12:30pm – 2:30pm	Women's & Girls' Emergency Centre 361 Riley Street, Surry Hills
<b>Friday</b>	1:30pm – 2:30pm	Newtown Mission 280A King Street, Newtown

\*See <http://piac.asn.au/node/251> to check for an up-to-date timetable.

## Appendix 2: Sample Letter of Demand

15 June 2010  
Helen Full  
100 Smith Street  
Sydney NSW 2000

### **LETTER OF DEMAND**

*Dear Ms Full,*

*I am writing concerning the refund of my bond money.  
You owe me the amount of \$720.00.*

*On 30 June 2010 our agreement ended, when I vacated Room 3 of 120 Sydney Street,  
Sydney.*

*Enclosed is a copy of our agreement and my receipt, which shows the bond money that I  
paid to you.*

*I demand that payment of the full amount of \$720.00 be paid to me at the address stated  
below within 7 days from the date of this letter.*

*If this matter is not resolved by the time specified above, I reserve the right to commence  
legal proceedings to recover the debt without further notice to you and this letter may be  
tendered in court as evidence of your failure to pay.*

*Yours sincerely*

*Maria Marco  
Address: 13 Australia St, Sydney  
Tel: 9999 1234*



## MALLESONS STEPHEN JAQUES

Prepared with the assistance of the Mallesons Human Rights Law Group

This kit was produced by the Inner Sydney Tenants' Advice & Advocacy Service, a tenants' advice service housed within Redfern Legal Centre.

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**This kit can be downloaded at [rlc.org.au](http://rlc.org.au)**