

# Putting up the rent

## Information for landlords

If you are considering increasing the rent there are rules you need to follow.

### When can rent be increased

If the fixed term period of the agreement has ended and the tenant is on a continuing (periodic) tenancy you may increase the rent. Rent can be increased during the fixed term of the agreement only in certain circumstances (see below).

### Notice of a rent increase

Before any rent increase can take effect, you must give the tenant at least 60 days notice in writing before the date the increase becomes payable.

The notice must:

- specify the proposed new amount of rent (not the amount of the increase)
- specify the date from which the increased rent is payable
- be signed, dated and properly addressed to the tenant.

You can write your own notice or use the *Model rent increase notice* provided by Fair Trading.

If the notice is being posted, you must allow an extra 4 working days for delivery. More information about serving notices is available on the *Serving notice* page on the Fair Trading website.

### During the fixed term

During a fixed term agreement of **less than 2 years** the rent cannot be increased, unless a term has been added to the agreement saying it can. The term in the agreement must spell out the amount of the increase or the exact method of calculating the increase (eg. a dollar amount or %). It cannot be unclear, like 'in line with the market' or 'by the rate of inflation'. Even where the tenant has agreed to the increase in the agreement, you still

have to provide the minimum 60 days written notice before the increase can take effect.

During a fixed term agreement of **2 years or more** the rent can be increased at anytime (so long as 60 days notice is given) but cannot be increased more than once in any 12 month period. It is important to note that the tenant can give 21 days written notice and vacate before the rent increase becomes payable and is not considered to have broken the agreement early.

You cannot avoid having to give 60 days notice by signing a new agreement with the same tenant. The notice still has to be given 60 days before the rent increase can take effect.

Failure to provide proper notice could result in fines being imposed as well as an order from the NSW Civil and Administrative Tribunal to pay back any unlawful increase to the tenant for the previous 12 months.

If you have entered into a tenancy without having a written agreement in place you cannot increase the rent during the first 6 months. For more information refer to the *Completing a tenancy agreement* page on the Fair Trading website.

You cannot ask the tenant to 'top-up' the bond following a rent increase. For more information refer to the *Taking a bond* page on the Fair Trading website.

### Negotiating with the tenant

After you have given notice, the tenant may approach you asking to have the increase reduced or withdrawn. If you agree on a smaller increase you do not have to serve another notice - the agreed rent simply becomes payable from the same day as the original notice. However, it is a good idea to write down the agreed amount and give the tenant a copy.

## Disputes about rent increases

The tenant can apply to the Tribunal if they believe that a rent increase is excessive. The Tribunal has the power to set the rent for the next 12 months. The Tribunal will look at evidence about whether the proposed rent is in line with the general market rent for similar premises in the area or a similar locality. It will also look at evidence of other factors, such as the state of repair of the premises, any improvements done by the tenant and when the last rent increase occurred. It is a matter for the tenant to prove their case if they apply to the Tribunal.

	need to state in the agreement
Tribunal considers market rents and other relevant factors if tenant claims excessive increase	Similar factors considered with the addition of when the last increase occurred

## Frequency of rent increases

You should carefully consider the frequency and amounts of rent increases. Regularly reviewing the rent you are charging and increasing it by small amounts helps to keep the rent at or near the market level. This in turn avoids the need for large increases that can cause the tenant to leave or encourage them to challenge the increase. On the other hand, some landlords see merit in keeping the rent below the market level in order to retain a long-term good tenant and avoid the costs associated with having the premises vacant and finding a new tenant. Timing is another factor to take into account. For example, most landlords would choose not to give a rent increase notice that took effect just before Christmas.

## At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

Old laws	New laws
Minimum 60 days notice of rent increase	Same
Rent could only increase during a fixed term agreement, however long, if stated in the agreement :	Flexibility to increase the rent in fixed terms of 2 years or more without