

Tenancy Services



Settling disputes by self-resolution

Tenancy problems that arise between landlords and tenants can often be easily sorted out by talking with each other. This booklet provides tips and tools to help you prepare for an easy and productive conversation.

www.tenancy.govt.nz



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
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Settling disputes by self-resolution

If things go wrong in the tenancy, the first thing to do is to talk together about the problem and try to work out a solution. There are other legal processes available to help if you cannot reach an agreement after talking with each other.

What is a tenancy dispute?

Tenancy disputes can arise when landlords or tenants don't follow the rules. The Residential Tenancies Act 1986 (the Act) sets out the rights and responsibilities of landlords and tenants. It's important to understand what landlords and tenants are required to do before, during and at the end of a tenancy to avoid problems.

When a person doesn't follow these rules or the terms of the tenancy agreement, it's called a breach. Sometimes the person may not realise they have breached, so having a conversation with each other can often easily sort out the problems.

What is self-resolution?

Self-resolution means talking together and reaching an agreement to sort out the tenancy problem. It is a chance for landlords and tenants to talk together and listen to each other's concerns, to understand the issues and work together to sort out the problem.

If you reach an agreement, it's a good idea to write down what you've agreed, then both sign and date it. Each of you should keep a copy. This avoids later confusion about what you agreed. You might also arrange to meet again later to check how things are going.

How is self-resolution useful?

Talking together to sort out tenancy problems can lead to a less stressful and more positive working relationship between landlords and tenants. If you reach an agreement after talking with each other, a solution to the issues can be in place more quickly.

It can also be less stressful, costly and time-consuming if you reach an agreement yourselves, without the need for mediation at Tenancy Services or a Tenancy Tribunal hearing at a district court.

This guide contains a summary of key information on self-resolution and is intended as a quick reference document to help landlords and tenants talk about and resolve tenancy problems between themselves.

Not all information relating to tenancy disputes is covered or discussed in detail.

For more information and other resources, visit the Tenancy Services website: www.tenancy.govt.nz

How to avoid tenancy problems?

Doing the right things before, during and at the end of a tenancy can help avoid tenancy problems. It's also important to know how the tenancy law protects you, and your rights and responsibilities under the Act.

Residential Tenancies Act 1986



Covers

- › the relationship between landlords and tenants
- › outlines their rights and responsibilities
- › provides a framework for settling tenancy disputes
- › most renting arrangements, including boarding houses but some special rules apply



Does not cover

- › flatmates (people who live in the rental home but are not listed on the tenancy agreement)
- › student accommodation
- › holiday homes
- › hotels and motels
- › hospitals and rest homes
- › commercial tenancies
- › certain other excluded arrangements under the Act

Key Responsibilities For

LANDLORDS include, but not limited to:

- › Make sure the property is in a reasonable condition
- › Meet all relevant building, health and safety standards
- › Provide all mandatory paperwork and keep records
- › Let the tenant have quiet enjoyment of the property
- › Have an agent if you're out of New Zealand for more than 21 days

TENANTS include, but not limited to:

- › Pay the rent on time
- › Keep the property reasonably clean and tidy
- › Comply with clauses agreed to in the tenancy agreement
- › Let the landlord know about any damage or repairs straight away
- › Must not disturb the neighbours or other tenants

Keeping Records

Examples include, but not limited to:

- › Contact details for landlord or tenants
- › Tenancy agreement and any required statements
- › Bond receipt and rent receipts (if required)
- › Initial property inspection report
- › Communications with each other (e.g. emails)
- › Receipts for maintenance done to the property (e.g. bathroom fan installation)
- › Operating manuals for electrical appliances (e.g. user guide for heat pump)

Starting a tenancy

During a tenancy

Ending a tenancy



A **tenancy agreement** is a contract between the landlord and tenant. It must be in writing and signed by both parties. This sets out everything that is agreed to and legally required for the tenancy. The landlord must give tenants a copy before the tenancy starts. Both landlords and tenants are still protected by the relevant tenancy laws even if there is no written agreement.



Landlords and tenants should do an **initial property inspection** together at the start of a tenancy. It's a good idea to take photos to help show the condition of the property and any furniture or items that are included. Record the water and power meter readings and talk about how to set up utility connections.



A landlord can ask tenants to pay a **bond** when moving into a property. This can be an equivalent amount of up to four weeks' rent. The landlord must give tenants a receipt and lodge the bond with Tenancy Services within 23 working days of receiving the money. Both landlords and tenants are responsible to keep the details on the bond form up to date.



Rent charged in advance cannot be more than the equivalent amount of two weeks' rent. The landlord must give the tenants a receipt for rent when there is no other record available to the tenants. Rent can only be increased after the first 12 months of a tenancy commencing or 12 months after the last increase. The landlord must give tenants at least 60 days' written notice of a rent increase (or at least 28 days' written notice for boarding house tenancies).

Starting a tenancy

During a tenancy

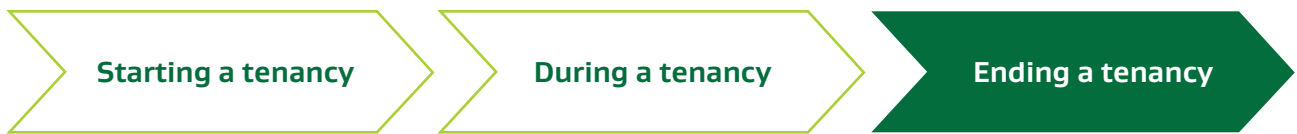
Ending a tenancy



Regular property **inspections** are good opportunities to talk with each other about any maintenance issues. Both landlords and tenants are responsible for keeping the property in a reasonable condition. Landlords should make sure the property is safe and healthy to live in. Tenants should keep the property reasonably clean and tidy.



If something in the property gets damaged or needs **repairs**, talk with each other straight away on what and when the repairs can be done. Take steps to minimise further damage to the property or belongings if it is safe and practical to do so. A 14-day notice to remedy letter can be issued to the landlord or tenant if the person is required, but fails, to fix something. There are limits on liability that may apply to any careless damage caused by tenants.



Check how much time in advance you must **give notice** to end a tenancy. Landlords or tenants cannot give notice to end a fixed-term tenancy early unless both parties agree to extend, renew or end the tenancy. Either party can also apply to the Tenancy Tribunal for a reduction or termination of the fixed-term tenancy if there are unforeseen circumstances leading to severe hardship. Fixed-term tenancies (for longer than 90 days) become a periodic tenancy when it ends, unless proper notice is given to not continue the tenancy on expiry of the fixed term or the parties agree otherwise, for example to renew the fixed term. Unless certain circumstances apply, the normal notice periods required are as follows:

Notice periods

Fixed-term tenancies can only be varied if the landlord and all the tenants agree. Any agreement should be in writing and should include what's been agreed to. Both the landlord and tenants should sign the agreement and keep a copy of it.

If a landlord agrees to let the tenant end the fixed-term tenancy early, the landlord can recover from the tenant any expenses reasonably incurred in respect of ending the fixed-term tenancy early – for example, the cost to advertise for new tenants.

The landlord must first provide the tenant with an itemised account of expenses.

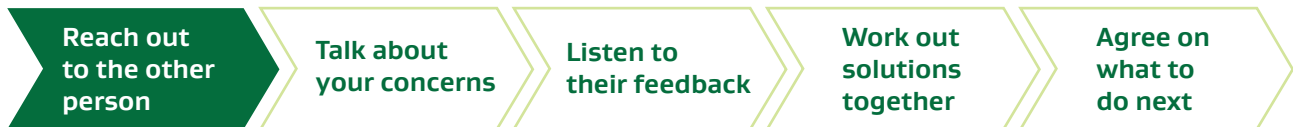
Fixed-term tenancies signed on or after 11 February 2021 will convert to periodic tenancies unless a landlord or tenant gives appropriate notice as below, or the parties agree to extend, renew or end the fixed-term tenancy.

	Landlords must give at least:	Tenants must give at least:
To end a periodic tenancy	either 90 days' written notice or in some cases, 42 days' written notice	21 days' written notice
To end a service tenancy	usually 14 days' written notice A number of varied situations apply when ending a service tenancy. See information at tenancy.govt.nz/ending-a-tenancy/giving-notice-to-end-tenancy/ for a complete explanation.	usually 14 days' written notice If your employment hasn't ended, you must give 21 days' written notice.
To end a boarding house tenancy	28 days' written notice There are some exceptions. See tenancy.govt.nz/ending-a-tenancy/ending-a-boarding-house-tenancy/ for more information.	48 hours' notice (preferably in writing)



Landlords and tenants should do a **final property inspection** together to confirm the property and chattels are reasonably clean and tidy, and the condition of these. Both the landlord and tenant need to complete and sign the **bond refund** form if an agreement is reached, never sign a blank form. Either person can send the completed form to Tenancy Services. The refund is usually processed within 15 working days.

How to talk about tenancy problems?



Get in touch with the other person as soon as there is a problem in the tenancy. Arrange for a time to talk together about the issues.

Choose a way of talking with each other that you are comfortable with and is convenient to both. Talking face-to-face is best but you may want to have a phone conversation or send an email instead.

Talking Face-to-Face



Pros

- › You can choose to talk together at a place that is comfortable and not easily disrupted.
- › You can have a conversation more easily when you are talking together face-to-face.
- › You can see and hear the other person's tone and body language when talking.
- › You can ask questions more easily to clarify things and avoid misunderstanding.
- › If the conversation gets heated or stalls, you can talk together again after taking a short break.
- › If it is a property maintenance issue, having the conversation in person at the property allows you to inspect the problems and assess what needs to be done.



Cons

- › You may not feel as confident or comfortable to talk face-to-face as the other person.
- › You may have to react to differing views or manage confrontations on the spot.
- › You may have little time to look for more information about the issue or tenancy laws.
- › You will need to find ways to accurately record what was discussed with each other.

Talking Over the Phone



Pros

- › You may feel more confident or comfortable when not talking face-to-face.
- › You can hear the other person's tone when talking to better inform you of their emotions.
- › You can ask questions more easily to clarify things and avoid misunderstanding.
- › You may have more control when managing a heated conversation.



Cons

- › You may not be fully prepared to talk about the problem when the other person calls.
- › You may have to react to differing views or manage confrontations on the spot.
- › You cannot see the other person's body language when they are talking.
- › You may have little time to look for more information about the issue or tenancy laws.
- › You will need to find ways to accurately record what was discussed with each other.
- › You cannot use photos to help talk about the issues unless you have sent them prior to the call.

Sending Email or Letters



Pros

- › You have a record of the conversation and the issues discussed with each other.
- › You can be better prepared and have more control over when and how you respond.
- › You may feel more confident or comfortable writing to each other instead of talking face-to-face.
- › You can ask someone you trust to help you with what to say in the email or letter.
- › You can attach photos or other relevant information to help talk about the problems.



Cons

- › You cannot manage misunderstandings or talk together about an issue straight away.
- › You cannot see the other person's tone and body language in an email or letter.
- › Words can be easily misinterpreted or misunderstood.
- › The problem can take longer to sort out because of the back and forth messaging.
- › It can be difficult to understand each other if you can't write clearly in the same language.

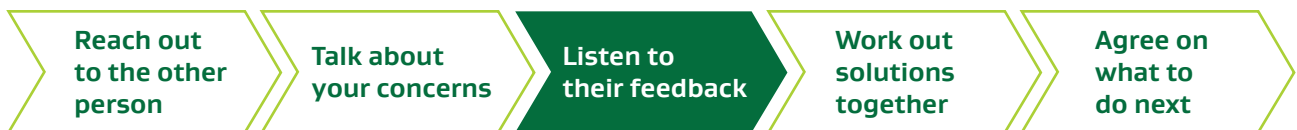


Use photos of a maintenance issue or financial records to help explain the situation and the problem. Ask the other person for their feedback to make sure they understood correctly the issues and your concerns.

Use appropriate words, tone and body language to show your willingness to work together to sort out the problem. You may wish to bring a trusted person to a face-to-face or phone meeting for emotional support.

Describe the Problem

1. What is the issue and how did it come about?	
2. Is it a new or repeated issue?	
3. How is this issue a concern for you?	

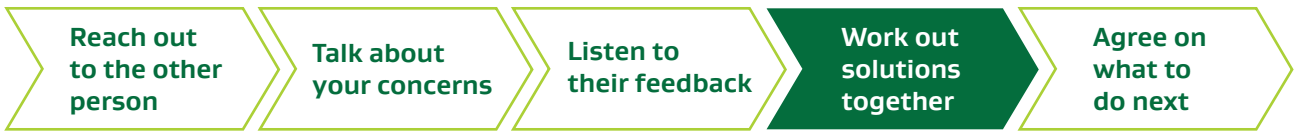


Listen to what the other person has to say, ask questions if you need things clarified and try to understand their concerns. Remember, understanding their position on the problem does not necessarily mean you agree with it. But this will help with working out an agreeable solution.

Be prepared to pause the conversation and continue at another time if either of you needs time to consult on the information or verify the issues.

Find Common Ground

4. What concerns may the other person have on the issue?	
5. How can you help to ease their concerns?	
6. What are the benefits in sorting out this issue?	

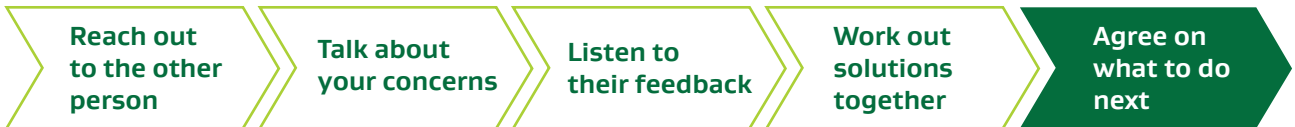


Be realistic with your suggestions and make sure they are achievable. It may be helpful to point out how sorting out this problem can benefit the other person. Think about which suggestions you'd be willing to change or give up so that the other person will agree to.

Be prepared to pause the conversation and continue at another time if either of you needs time to reconsider the suggestions.

Suggest Some Options

7. What do you want to achieve from this conversation?	
8. What are some ways to sort out the issue?	
9. What can you do if you cannot agree on the suggestions?	



If you reach agreement, talk together about what needs to be done and when by. Agree on how to prevent the issues happening again and what happens if the problems reoccur. Also consider what needs to happen if the agreed actions are not completed in time. If you cannot reach an agreement, think about what other options you have to settling the dispute.

Sort Out the Problem

10. What actions are needed and how long will they take?	
11. How can you avoid this issue from happening again?	
12. What happens if the issue continues or happens again?	

If you reach agreement by self-resolution



FastTrack Resolution – “Agree, Advise, Apply”



After talking with each other about the issues, if you **agree** on how to sort out the problem, you should write down what was agreed and have it signed by both parties to avoid future confusion. If you'd like to formalise the agreement by way of a Mediator's Order, the landlord can apply for FastTrack Resolution, which is legal and binding. This is quick and inexpensive, and does not require a scheduled mediation.

Fast-track Resolution



Suitable For

- › Agreement reached between the landlord and tenant, and needs to be formalised as an Order.
- › Agreement reached is straightforward and understood by both the landlord and tenants.
- › A previous verbal agreement has broken down and a new agreement has been made.



Not Suitable For

- › Applications with more than three issues, involving three or more tenants, or involving minors.
- › Applications for damages or exemplary damages.
- › Applications on monthly rent payments.
- › Applications involving persons who require a licensed interpreter.



The landlord must **advise** the tenant that they are applying with the Tenancy Tribunal for FastTrack Resolution. The landlord must also provide a current phone number for the tenant, and check that the tenant is available to take a mediator's phone call to confirm the agreement details filed in the FastTrack Resolution application.



The landlord then completes the Tenancy Tribunal application online to **apply** for FastTrack Resolution. All Tenancy Tribunal applications have a filing fee of \$27 (including GST).

A mediator will call the tenant to check they understood and agreed to the details filed in the FastTrack Resolution application. If the mediator can't reach the tenant after repeated attempts within two business days of receiving the application, the application will either be referred to mediation or to the Tenancy Tribunal for a hearing.

If the tenant is unsure about any part of the agreement, the mediator will call and discuss this with the landlord. The mediator will then conduct telephone mediation with the landlord and tenant to discuss the issues. Once the agreement can be confirmed, it is formalised in writing as a Mediator's Order that will be sent to the Tenancy Tribunal to be sealed.

Other ways to settle disputes

If you can't reach agreement by self-resolution



Tenancy Services

If landlords and tenants cannot come to an agreement after talking between themselves, Tenancy Services offers mediation service where you have the opportunity to resolve the differences by talking together with a mediator. Mediation can be by phone, video link or in person.

It is simple and quick to apply for mediation through the Tenancy Tribunal online portal. Alternatively, application forms are available at the Citizens Advice Bureau or by contacting Tenancy Services. There will be additional processing time for paper applications. There is an application fee of \$27 (including GST).

Mediation cases usually take 10 working days to be scheduled once an application is received and all required information supplied. This may take longer in busier periods. Attendance is voluntary, and the landlord or tenant can choose to resolve the dispute through the Tenancy Tribunal instead.



A **Case Coordinator** works primarily with the applicant to help ensure the paperwork is complete, schedules mediation and Tribunal hearings, answers queries on the applications and administers the notices to attend the Tribunal hearing.



The job of a **Mediator** is to help identify the issues and help the landlord and tenant talk together to reach a workable solution. Mediators are very experienced in tenancy issues and make sure everyone has their say. Mediators do not take sides and can't decide anything for you, but they will help you reach an agreement that is agreeable to both parties.

You can ask for permission to bring a support person to the mediation. A support person is different to a witness, as you cannot bring witnesses to mediation. The support person is there to give you emotional support, but they can't say anything during the mediation. You should bring any supporting documents and information to the mediation, such as photo evidence, financial records or previous communications with each other (including a copy of the 14-day notice to remedy letter if previously issued).



Once you reach an agreement in mediation, the mediator will write up the agreement as a Mediator's Order. In most cases, the **Mediator's Order** will be sent to the Tenancy Tribunal for an adjudicator to sign and seal, which is then legally binding. A sealed Mediator's Order is enforceable through the Ministry of Justice if either person does not comply with the agreement.



If the dispute cannot be resolved by mediation, the dispute will most likely to be referred to the Tenancy Tribunal for a hearing. The Tribunal is part of the Ministry of Justice.

Unless the dispute was referred to the Tenancy Tribunal after not reaching agreement in mediation, you can apply through the Tenancy Tribunal online portal, and there is an application fee of \$27 (including GST). Alternatively, paper application forms are also available. Tribunal hearings usually take 20 working days to be scheduled once an application is received and all required information supplied. This may take longer in busier periods or in regions where courts do not sit frequently. Tribunal hearings take place in courts around the country, and the number of hearing days varies from one court to another.

If you are bringing evidence, documents or photos not included in your application, you must bring 3 copies of each to the hearing.

These supporting documents must be clear to read and are printed on singled-sized A4 sheets.

Call Tenancy Services in advance if you want to bring any witnesses to the Tribunal hearing. The witnesses must wait outside the courtroom until they are called to give evidence. If someone refuses to come, you can ask the Ministry of Justice for a witness summon. You can bring a support person, but they can't say anything in the courtroom or be a witness.

People normally represent themselves. You may only have a lawyer or a representative appear on your behalf in special cases.



An **Adjudicator** listens to each person, hears any witnesses, looks at any evidence and then makes a decision. This decision is binding and both the landlord and tenant must comply. The decision might not be made at the end of the hearing, but will be written up closely after and posted out to the parties. This is called a Reserved Decision.

The Tribunal hearing will only cover the issues stated in the application. Make sure you attend the hearing if you want your side of the dispute to be heard. If you are not the applicant and want to raise other issues you will need to file a cross application. If you are the applicant and do not appear, the application will likely be dismissed. If you are the other person and do not appear, the Tribunal will still be able to make a decision in your absence.



After the hearing, the Tribunal can issue a **Tenancy Tribunal Order** or order both parties to go back to mediation. A Tenancy Tribunal Order is enforceable through the Ministry of Justice if either person does not comply with the decision.