

THE NSW BOARDING HOUSE OCCUPANCY PRINCIPLES: A QUICK GUIDE

Let's take a quick look at all twelve of the NSW boarding house occupancy principles as they currently stand. The following is a summary only: for complete advice and information about occupancy principles and your rights in general, contact your local Tenants Advice and Advocacy Service (TAAS) – visit www.tenants.org.au to find your local service.

Buried down the back of The *NSW Boarding Houses Act 2012* (in Schedule One) is a list of occupancy principles applicable to all registrable boarding houses in NSW. If you live in a boarding house and you do not have a residential tenancy agreement then these 12 principles set out your basic entitlements as a resident.



1 State of premises

You are entitled to live in premises that are:

- Reasonably clean
- In a reasonable state of repair
- Reasonably secure

In general the term 'reasonable' reflects general society's expectations around cleanliness, repair and security.



2 Rules

A boarding house may have rules – for example, about visitors or noise or the use of common areas. You are entitled to know what the rules are before you move in. Many boarding houses have quite extensive house rules and you should read them carefully.



3 Penalties prohibited

The proprietor of the boarding house cannot fine you, or demand other penalties for breaching an occupancy agreement or the rules of the boarding house. Sometimes it can be hard to distinguish a penalty from a cost. For example, you may be liable for the cost of repairing something you have broken but generally the proprietor cannot charge you an arbitrary amount as a fine for the same thing. If you believe you are being charged a fine – or 'fee' – you should contact your local TAAS.



4 Quiet enjoyment of the premises

You are entitled to quiet enjoyment of the premises. This means the proprietor must not try to stop you from occupying and

enjoying your room or using the common areas of the house as long as you do not interfere with the same rights of others.



5 Inspections and repairs

The proprietor or caretaker can enter your room/s to undertake repairs and for other 'reasonable' grounds – such as inspections – but they must do so at a reasonable time. For example, it would be unreasonable for the proprietor to knock on your door at 3am on a Sunday to conduct a cleaning inspection. It would however be OK, if your room was on fire for the proprietor to enter without notice.



6 Notice of increase of occupancy fee

The proprietor can increase the amount you pay for your accommodation (the occupancy fee), but they must give you at least four weeks written notice.

7 Utility charges

The proprietor can charge you for utilities (electricity, gas, water and oil) if:

a) You were notified when you moved in that utility charges will be charged; and

b) The charge is based on the actual cost of providing the utility by the proprietor and a 'reasonable' measure or estimate of your share is used to calculate that charge.

Note: The Australian Energy Regulator may require that separate meters be installed or that the property has a specific exemption before you can be asked to pay for energy (electricity, gas or oil). Contact your local TAAS if you need further advice.



8 Payment of security deposit

The proprietor can require a security deposit – sometimes referred to as a 'bond' – of not more than two weeks occupancy fee (or rent); make sure you get a receipt. This amount includes all sums of money held as security against you causing damage or breaching your agreement – the proprietor cannot add additional amounts beyond these. They cannot ask for a security deposit until they have actually entered into an agreement with you.

When you move out, the proprietor must repay the security deposit to you within 14 days. They can, however, keep money to cover any damage caused by you or someone you invited into the property, and certain other amounts that you may owe. You should seek advice from your local TAAS if you disagree with the amount that the proprietor is keeping from your security deposit.

9 Information about termination

You are entitled to know how and why your agreement can be terminated. You are entitled to know how much notice you will be given if you are evicted.

The proprietor must set out the reason for which you could be asked to leave. In general, your agreement should list all the possible grounds for eviction.



10 Notice of eviction

The proprietor cannot evict you without giving you 'reasonable' notice.

In determining what is reasonable the proprietor may take into account the safety of other residents and the caretaker. The eviction notice must be in writing. For example, a very short notice may be reasonable if you have threatened another resident, however, you should get a far longer period of notice if the landlord is merely planning to renovate your room.



11 Use of alternative dispute resolution

The occupancy principles require that you and the proprietor should try to sort out your disputes using a 'reasonable' dispute resolution mechanism. This

principle means that the proprietor must attempt to resolve any dispute with you through some reasonable mechanism, whether that is the NSW Civil and Administrative Tribunal (NCAT), a Community Justice Centre, a warning or some other form of mediation or negotiation.



12 Written receipts

Last but certainly not least, the proprietor must give you written receipts for any money you pay to them – whether it is for occupation fees, the security deposit, utility charges, or any other charges.

CONCLUSION

The occupancy principles set out in the *NSW Boarding Houses Act 2012* may not solve every problem you may encounter as a boarding house resident, but they are a useful tool should you ever find yourself in dispute with the proprietor. If it looks like a proprietor is not following the occupancy principles then you may be able to apply to NCAT and get an order that the proprietor comply with them.

You should also bear in mind that most NSW boarding house residents are covered by the Australian Consumer Law as consumers. There are a number of obligations and rights that come from this law that can assist you in resolving disputes with the proprietor.

Good luck and happy occupancy!



tenants.org.au