

Landlord ends tenancy agreement

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet summarises the law in NSW about what a landlord must do to end a tenancy agreement lawfully.

How the landlord can end the agreement

In most cases, the landlord/agent must give you a *termination notice*. Your tenancy agreement ends once you give vacant possession of the premises to the landlord/agent (that is, you move out and return the keys in person).

If you do not vacate by the day in the notice, the landlord can then apply to the NSW Civil and Administrative Tribunal (NCAT) for a *termination order*.

A termination order ends the tenancy and specifies the day by which you must give vacant possession.

Ending agreement without notice

In some cases, the landlord can apply for a termination order without giving you notice. (See 'Application to the Tribunal without termination notice' below.)

Social housing providers

A social housing provider can end a tenancy agreement on certain grounds other than those outlined below.

Get help from your local Tenants' Advice & Advocacy Service.

The termination notice

The termination notice must be in writing, signed by the landlord/agent and set out:

- the address of the premises
- the day by which the landlord/agent wants vacant possession
- the *grounds* for termination (the reason/s, if any).

The landlord/agent must properly send or deliver the notice to you: in person, by post, by email (to an email address you have specified for documents of that kind), or by hand in an addressed envelope to a mailbox at your home or business address.

If there is a mistake in the notice or it is not properly sent/delivered, and the landlord applies for a termination order, then you can argue in the Tribunal that the notice is invalid and the landlord's application should be dismissed. However, the Tribunal may overlook such mistakes.

How much notice the landlord must give

This depends on the type of tenancy agreement and the grounds for termination (if any) – see table below.

A *fixed-term* agreement is for a specified period (e.g. 6 months). A *periodic* agreement is one where the fixed-term has expired or no fixed term is specified.

If a termination notice is posted to you, the landlord/agent must allow an extra 7 working days for delivery.

Minimum notice periods

Grounds	Fixed-term agreement	Periodic agreement
No grounds	30 days at end (see below)	90 days
Sale of premises	not valid	30 days
Breach of agreement	14 days	14 days

Immediate notice if premises unusable

The landlord/agent can give immediate notice if the premises are destroyed or become wholly or partly unliveable (e.g. due to fire or flood, not due to a breach of the Agreement); or if the premises become no longer lawfully usable as a residence; or the premises are acquired by an authority by compulsory process (such as resuming them to build a road).

Termination without grounds – without a reason

Fixed-term agreement The landlord/agent cannot end your agreement without grounds before the last day of the fixed term. If the agreement is not terminated at the end of the term, it continues as a periodic agreement.

If the landlord/agent wants to end your agreement at the end of the fixed term, they must give you at least 30 days notice that includes the last day of the term.

If the landlord/agent applies for a termination order, the Tribunal must terminate the agreement.

Periodic agreement The landlord/agent can end the agreement without grounds by giving 90 days notice. If the landlord applies for a termination order, the Tribunal must terminate the agreement.

Employee or caretaker residential tenancy agreement

If an employer/landlord would like to terminate the residential tenancy agreement of their employee or caretaker, the employer/landlord must give at least 28 days' notice.

Long-term tenancy If the landlord applies for a termination order when:

- you had a fixed-term agreement which has expired, and
- you have been in continual possession of the same premises for 20 years or more;

then the Tribunal can consider the circumstances of the case and decide whether or not to make the order.

If the Tribunal decides to make the order, it must give you at least 90 days to vacate the premises.

Termination for breach of agreement

Fixed-term and periodic agreements

If you are in breach of your tenancy agreement – in other words, if you fail to meet your obligations under the agreement, e.g. not paying rent – the landlord/ agent can give you a 14 day termination notice.

If you do not obey the notice, the landlord/agent can apply for a termination order. If they do, you should attend the Tribunal hearing. If you can show that you have fixed the breach or taken steps towards this, the Tribunal may decide not to terminate the agreement.

Termination for non-payment of rent If you have breached the agreement solely by getting behind with the rent, the landlord/agent can give you a *non-payment termination notice*. You must owe at least 14 days rent before they can give you this notice.

If you get such a notice, you are not required to vacate if you pay all the rent owing or you enter into, and fully comply with, an agreed repayment plan.

See Factsheet 05: *Rent arrears* for more information.

Termination for sale of premises

Fixed-term agreement Your agreement cannot be terminated because the premises are being sold.

Periodic agreement If the landlord has entered into a contract for sale that requires them to give vacant possession to the buyer, they can give you a 30 day termination notice.

Application to the Tribunal without notice

The landlord/agent can apply to the Tribunal for a termination order without giving you a termination notice on one or more of the following grounds:

- You, your guests, another occupant or their guests have caused or permitted:
 - serious damage to the premises or any neighbouring or common property
 - injury to the landlord, agent, the landlord's/agent's employees, or your neighbours

- use of the premises for illegal purposes
- You or another occupant has seriously or persistently threatened or abused the landlord, agent or the landlord's/agent's employees

The Tribunal may make a termination order and may order you to give immediate possession of the premises to the landlord.

Hardship to landlord

The landlord can apply for a termination order without notice if they would suffer undue hardship if the tenancy continued, the Tribunal may make a termination order and may also order the landlord to compensate you for loss of the tenancy.

Leaving before the date given by landlord

Fixed-term agreement You may leave at any time before the termination date listed on the notice; however, you will be liable for the rent until the end of the fixed term.

Periodic agreement You can give vacant possession (move out) and stop paying rent at any time before the termination date listed on the notice. You are not required to give notice to the landlord/agent, however it is prudent to inform them, in writing.

Withdrawal of termination notice

The landlord may withdraw a termination notice at any time with your consent, however they may give a further notice for another reason.

Eviction – your rights

No eviction without an Tribunal or court order

The landlord/agent must follow one of the processes outlined above before you can be evicted. Anyone locking you out without a Tribunal or court order can be fined up to \$22,000 and ordered to compensate you.

In the case of *Violet v Ghaderi-Araghi* [2017] NSWCATAP 134, the Tribunal (on appeal) approved a decision that the landlord should pay \$2,000 in compensation for the loss of use/enjoyment suffered by a former tenant as a result of an illegal lockout.

Retaliatory eviction

If the landlord/agent acts to end the tenancy when you try to enforce your legal rights (such as asking for repairs), the Tribunal may find this to be a retaliatory eviction. They may declare a termination notice to have no effect and/or refuse to make a termination order.

- You can apply to the Tribunal for an order that the notice was retaliatory. You must apply within 30 days of getting a 90 day notice (periodic agreement) or within 14 days for other notices.

- If the landlord/agent has applied to the Tribunal for a termination order, you should attend the hearing and argue that the application was retaliatory.

If the Tribunal makes a termination order the Tribunal will consider the relative hardship to you and the landlord and specify the day for vacant possession.

If you do not vacate by the specified day, the landlord/ agent can get a warrant for possession from the Tribunal. With this warrant, a sheriff's officer can remove you from the premises – with police help if needed.

See also

Factsheet 11: *NSW Civil & Administrative Tribunal*

Factsheet updated: March 2020

For free tenancy advice, call your local Tenants' Advice and Advocacy Service:

SYDNEY:

- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 9559 2899
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

REGIONAL:

- Blue Mountains 4704 0201
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

ABORIGINAL:

- Sydney 9833 3314
- West NSW 6881 5700
- South NSW 1800 672 185
- North NSW 1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

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