

TENANTS RIGHTS FACTSHEET 10

Landlord ends agreement

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

How the landlord can end your agreement

In most cases, the landlord must give you a *termination notice*. The agreement ends once you give vacant possession of the premises to the landlord (you move out and return the keys).

If you do not leave by the day specified in the notice, the landlord can then apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for a *termination order*.

A termination order ends the tenancy and specifies the day on which you have to give vacant possession.

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

Social housing providers

A social housing provider can end a tenancy agreement on certain grounds other than those outlined below. Contact your local Tenants Advice and Advocacy Service for details.

The termination notice

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

- the premises concerned
- the day by which the landlord/agent wants vacant possession of the premises
- the grounds (if any) for the notice.

The notice must be properly 'served' to you in person, by post, by fax, or hand-delivered in an addressed envelope to a mailbox at your residential or business address.

If there is a mistake in the notice or it is not served properly, you can argue in the CTTT that it is invalid and the landlord's application should be dismissed. However, the CTTT has discretion to overlook defects in the notice or how it was served.

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, an extra 4 working days must be allowed for delivery.

Minimum notice periods

| Ground | Fixed-term agreement | Periodic agreement |
|---------------------|----------------------|--------------------|
| No ground | 30 days (see below) | 90 days |
| Sale of premises | not applicable | 30 days |
| Breach of agreement | 14 days | 14 days |

Immediate notice if premises unusable You can give immediate notice if the premises are destroyed, become wholly or partly unusable (other than due to a breach of the tenancy agreement), cease to be lawfully usable as a residence or are appropriated by a compulsory process.

Termination without grounds

Fixed-term agreement The landlord cannot end your agreement without grounds before the last day of the fixed term. If the agreement does not terminate at the end of the term, it automatically becomes a periodic agreement.

If the landlord does not want your tenancy to continue after the fixed term, they must give you at least 30 days notice including the last day of the term.

If the landlord applies for a termination order, the CTTT must terminate the agreement.

Periodic agreement The landlord can end the agreement by giving 90 days notice. If the landlord applies for a termination order, the CTTT must terminate the agreement.

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

- you have been in continual possession of the same premises for 20 years or more, and
 - you had a fixed-term agreement which has expired
- the CTTT can consider the circumstances of the case and decide whether or not to make the order.

If the CTTT 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 have breached the agreement, the landlord can give you a 14-day termination notice.

If you do not obey the notice, the landlord can apply for a termination order. If they do, you should attend the CTTT hearing. If you can show that you have

fixed the breach or taken steps to fix it, the CTTT may decide not to end the tenancy.

Termination for non-payment of rent If you are in breach of agreement solely for rent arrears, the landlord can give you a *non-payment termination notice*. The rent must remain unpaid for not less than 14 days before this notice can be given.

If you get such a notice, you are not required to vacate if you pay all the rent owing or 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 of the premises that requires them to provide vacant possession of the premises, they can give you a 30-day termination notice.

Application to CTTT without notice

The landlord can apply to the CTTT for a termination order (under a fixed-term or periodic agreement) 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 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 CTTT 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 on the ground that they would suffer undue hardship if the tenancy continued. The CTTT may make a termination order

and may also order the landlord to compensate you for loss of the tenancy.

No eviction without a CTTT or court order

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

Vacating before termination date

At any time before the termination date, you may give vacant possession. Upon doing so (except at end of a fixed-term agreement) you can stop paying rent.

Withdrawal of termination notice

The landlord may withdraw a termination notice at any time with your consent. They may give a further notice on another ground however.

Retaliatory eviction

If the landlord acts to end the tenancy in response to you enforcing your legal rights, the CTTT may find this to be retaliatory eviction. It may declare a termination notice to have no effect and/or refuse to make a termination order.

- If the landlord has given you a termination notice, you can apply to the CTTT for an order that the notice was retaliatory.

When you have a periodic agreement and get a 90-day notice, you must apply within 30 days of getting the notice. In other cases, you must apply within 14 days of getting the notice.

- If the landlord has applied to the CTTT for a termination order, attend the CTTT hearing and argue that the application was retaliatory.

If the CTTT makes a termination order

The CTTT will consider the relative hardship to you and the landlord and specify the day on which you must give vacant possession.

If you are not out by the day specified, the landlord can get a warrant for possession from the CTTT and go to the Sheriff. A sheriff's officer can remove you from the premises, with police help if needed.

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FURTHER HELP: Tenants Advice and Advocacy Services

Sydney

- Inner 9698 5975
- Inner West 9559 2899
- South 9787 4679
- South West 4628 1678
- East 9386 9147
- West 8833 0911
- North 9884 9605
- North West 9413 2677

Regional

- Blue Mountains 1300 363 967
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid North Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1800 642 609

Aboriginal

- Sydney 9569 0222
- West NSW 1800 810 233
- South NSW 1800 672 185
- North NSW 1800 248 913
- Older persons 1800 131 310
- Website www.tenants.org.au
- NSW Fair Trading 133 220



This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia.
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