



Domestic Violence and Renting

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Copies are available from:
Hawkesbury Nepean Community Legal Centre
PO Box 736
Windsor NSW 2756
02 4587 8877

Electronic copies are available at www.hnclc.net.au.

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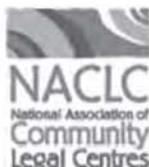
This booklet is based on the *NSW Residential Tenancies Act 2010* as at April 2012. It applies to the law in NSW only.

While every effort has been made to ensure that the information in this booklet is as up to date and accurate as possible, it is not legal advice. The law is complex and may change. Readers are advised to seek specific legal advice in relation to their particular situation. Hawkesbury Nepean Community Legal Centre does not accept any responsibility for any loss or damage caused as a result of any information contained in or omitted from this booklet.

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HOW TO USE THIS BOOKLET

This booklet outlines the options available to you if you are living in a rental property and experiencing domestic violence.

There are different options depending on your circumstances so it is important you follow the steps below:

Step 1

To get started, you need to answer five important questions.
Read pages 2 and 3 and answer all five questions.
You should then move on to Step 2.



Step 2

To find out your options:

- Co-tenants go to pages 4 - 7
- Sole tenants go to pages 8 - 10
- Occupants go to page 11

Go to Step 3 for more information.



Step 3

Read page 12 for information about locks, security
and tenant databases.

While this booklet may assist you to decide what you can do about your residential tenancy agreement (RTA), it is very important that you get further legal advice, as this area of law can be complicated. See the back of this booklet for referrals.

5 IMPORTANT QUESTIONS

To get started, you will need to answer the following five important questions.

Question 1: Are you a tenant?

1

If you have a residential tenancy agreement (RTA, also called a lease) you are a tenant. A RTA can be a written or oral agreement to rent a property. If you do not have a RTA, you are not a tenant; you are an occupant.

Question 2: Are you a co-tenant or a sole tenant?

2

If you are the only person named on the RTA, you are a sole tenant. If you and other people are named on the RTA, you are a co-tenant. Co-tenants are jointly and severally liable for any debts owing under the RTA. This means that any of the co-tenants can be asked to pay for all of the rent and for all damage caused to the property.

Question 3: Do you have a fixed term or periodic agreement?

3

If your RTA is for a specified period of time, such as 6 months, you have a fixed term agreement. Usually you cannot end a fixed term agreement early without having to compensate the landlord. If your RTA is not for a specified period of time or your fixed term agreement has expired, but you have continued to live in your rental property, you have a periodic agreement.

Question 4: Do you have a final apprehended violence order with an order prohibiting the defendant from accessing your rental property?

What is domestic violence?

4

Domestic violence can include a range of behaviours such as intimidation, coercion, emotional abuse, financial abuse, sexual abuse, physical abuse, isolation and psychological manipulation. If you are experiencing domestic violence you can apply for an AVO.

What is an AVO?

An apprehended violence order (AVO) is an order that restrains the behaviour of the perpetrator of violence (called the defendant). If you fear violence of any description and want an AVO, you should speak to the Police, your Local Court or your local Women's Domestic Violence Court Advocacy Service (WDVCAS). See the back of this booklet for contact details.

5 IMPORTANT QUESTIONS

What is the difference between an ADVO and an APVO?

Apprehended domestic violence orders (ADVO) are made where there is a domestic relationship between the victim and the defendant, for example, co-tenants who live together.

Apprehended personal violence orders (APVO) are made where there is no domestic relationship between the parties, for example, they are neighbours or work colleagues.

Are there different types of AVOs?

Yes, there are different types of AVOs.

A **PROVISIONAL AVO** is a temporary order applied for by the police over the phone, which protects a victim until the matter first goes to court.

An **INTERIM AVO** is a temporary order made by the court, which protects a victim until a Magistrate makes a final decision.

A **FINAL AVO** is an order made by a court when the defendant agrees or when the court makes a final decision that there should be an AVO in place for a period of time such as 2 years, to protect the victim.

What orders can an AVO contain?

There are certain orders that must be included in every AVO. These are called mandatory orders. The mandatory orders state that the defendant must not assault, molest, harass, threaten, intimidate or stalk the victim.

The court can also make other types of orders including orders that prohibit the defendant from accessing a property.

What types of orders prohibit access?

Generally, the types of orders that prohibit access include orders that the defendant not reside at the property, enter the property or go within a certain distance of the property.

Question 5: Do you want to stay or leave your rental property?

5 Everyone's situation is different. Sometimes people feel they need to move away to a safe place, while other people may want to stay where they are living because, for example, it's close to where they work or their children's school.

You should think about what you want to do.

There are options available to you if you want to stay in your rental property as well as options if you want to leave.

These options are discussed in Step 2 of this booklet.

To find out your options go to Step 2:

- Co-tenants go to pages 4 - 7
- Sole tenants go to pages 8 - 10
- Occupants go to page 11

OPTIONS FOR CO-TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

LEAVE – Fixed term agreement

Are you a co-tenant in a fixed term agreement and want to leave your rental property?

1. What if you just leave?

If you abandon your property you will still be legally responsible for rent and any damage caused by the other co-tenants who stay in the property. If you can't pay the debt owing you can be listed on a "bad tenants" database, which can make it very difficult to find another rental property. See page 12 for more information about tenant databases. This is why it is really important to make arrangements about your RTA rather than just leaving your rental property.

2. What if you all agree?

You can end your RTA without compensating the landlord if both the landlord and other co-tenant(s) agree to end it. If you reach an agreement you must put the agreement in writing and everyone should sign it. The agreement should also state that you do not owe your landlord compensation.

3. What if you have a final AVO that prevents the defendant from accessing your property?

If you have a final AVO that prevents a co-tenant, occupant or former co-tenant or former occupant from having access to your property, you can give your landlord a 14 day written termination notice and a copy of your AVO. Visit www.tenants.org.au for sample termination notices. If you end your RTA in these circumstances you will not have to compensate your landlord.

4. What if you don't have a final AVO that that prevents the defendant from accessing your property and you can't agree?

You can apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for an order to end your RTA. You will have to show the CTTT why you need to end your RTA by explaining the special circumstances of your case. Even if the CTTT makes an order ending your RTA, the CTTT may still order you to pay your landlord some compensation, but this is usually a much better option than simply abandoning your rental property.

BOND: If your co-tenants remain living in the property, you should write to them and ask them to pay you your contribution to the bond within 14 days. If they don't, you can apply to the CTTT for an order that they pay you your portion of the bond.

OPTIONS FOR CO-TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

LEAVE – Periodic agreement

Are you a co-tenant in a periodic agreement and want to leave your rental property?

1. What if you just leave?

If you abandon your property you will still be legally responsible for rent and any damage caused by the other co-tenants who stay in the property. If you can't pay the debt owing you can be listed on a "bad tenants" database, which can make it very difficult to find another rental property. See page 12 for more information about tenant databases. This is why it is really important to make arrangements about your RTA rather than just leaving your rental property.

2. What if you all agree?

You can end your RTA without compensating the landlord if both the landlord and other co-tenant(s) agree. If you reach an agreement you must put the agreement in writing and everyone should sign it. The agreement should also state that you do not owe your landlord compensation.

3. What if you all can't agree?

You can give your landlord and all the other co-tenants a **21 day written termination notice** and leave the property. Visit www.tenants.org.au for sample termination notices. You will be responsible for the rent until the end of the 21 day period.

BOND: If your co-tenants remain living in the property, you should write to them and ask them to pay you your contribution to the bond within 14 days. If they don't, you can apply to the CTTT for an order that they pay you your portion of the bond.

TIP FOR CO-TENANTS

If you need to sort out your rental property and are having difficulty obtaining a final AVO that prevents a defendant accessing your property, or if it is taking too long, remember you can apply to the CTTT for an order terminating your RTA.

OPTIONS FOR CO-TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

STAY – Fixed term agreement

Are you a co-tenant in a fixed term agreement and want to stay in your rental property?

1. What if you have a final AVO that prevents the defendant from accessing your property?

If you have a final AVO that prevents a co-tenant, occupant or former co-tenant or former occupant from having access to your property, you can choose to stay living in your property. The defendant's RTA will automatically end. Be aware that this will mean that you will have to pay all of the rent on your own.

2. What if you have an interim AVO that prevents the defendant from accessing your property?

An interim AVO excluding another co-tenant won't end their tenancy, but it will mean that they can't live at the property while the interim AVO remains in place. If the interim AVO becomes a final AVO that prevents the defendant from accessing your property it will end the defendant's RTA.

3. What if you don't have a final AVO that prevents the defendant from accessing your property?

If the perpetrator of violence is the co-tenant, you can apply to the CTTT for an order ending their RTA. You will have to show the CTTT why you need to end their RTA by explaining the special circumstances of your case.

BOND: Unless the perpetrator has been excluded from the premises by a final AVO or their debts exceed the amount of bond they paid, the perpetrator could seek repayment of their portion of the bond from you or by making an application to the CTTT.

OPTIONS FOR CO-TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

STAY – Periodic agreement

Are you a co-tenant in a periodic agreement and want to stay in your rental property?

1. What if you have a final AVO that prevents the defendant from accessing your property?

If you have a final AVO that prevents a co-tenant, occupant or former co-tenant or former occupant from having access to your property, you can choose to remain in your property. The defendant's RTA will automatically end. Be aware that this will mean that you will have to pay all of the rent on your own.

2. What if you have an interim AVO that prevents the defendant from accessing your property?

An interim AVO excluding another co-tenant won't end their tenancy, but it will mean that they can't live at the property while the interim AVO remains in place. If the interim AVO becomes a final AVO that prevents the defendant from accessing your property it will end the defendant's RTA.

3. What if you don't have a final AVO that prevents the defendant from accessing your property?

If the perpetrator of violence is the other co-tenant, you can apply to the CTTT for an order ending their RTA. You will have to show the CTTT why you need to end their RTA by explaining the special circumstances of your case.

BOND: Unless the perpetrator has been excluded from the premises by a final AVO or their debts exceed the amount of bond they paid, the perpetrator could seek repayment of their portion of the bond from you or by making an application to the CTTT.

TIP FOR CO-TENANTS

If you need to sort out your rental property and are having difficulty obtaining a final AVO that prevents a defendant accessing your property, or if it is taking too long, remember you can apply to the CTTT for an order terminating the defendant's RTA.

OPTIONS FOR SOLE TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

LEAVE – Fixed term agreement

Are you a sole tenant in a fixed term agreement and want to leave your rental property?

1. What if you just leave?

If you abandon your property your RTA will end, however you will likely have to compensate your landlord. If you can't pay the debt owing you can be listed on a "bad tenants" database, which can make it very difficult to find another rental property. See page 12 for more information about tenant databases. This is why it is really important to make arrangements about your RTA rather than just leaving your rental property.

2. What if your landlord agrees?

You can end your RTA without compensating the landlord if the landlord agrees. If you reach an agreement you must put the agreement in writing and everyone should sign it. The agreement should also state that you do not owe the landlord compensation.

3. What if you are near the end of your fixed term agreement?

You can give your landlord a 14 day written termination notice and leave at the end of your fixed term agreement. Visit www.tenants.org.au for sample termination notices.

4. What if you have a final AVO that prevents the defendant from accessing your property?

If you have a final AVO that prevents an occupant or former co-tenant or former occupant from accessing to your property, you can give your landlord a 14 day written termination notice and a copy of your AVO. Visit www.tenants.org.au for sample termination notices. If you end your RTA in these circumstances you will not have to pay your landlord any compensation.

5. What if you don't have a final AVO preventing the defendant from accessing your property and your landlord won't agree?

You can ask the CTTT to end your RTA. You will need to show the CTTT why you would suffer hardship if you had to remain in the property. Even if the CTTT makes an order ending your RTA, the CTTT may still order you to pay your landlord some compensation, but this is usually a much better option than simply abandoning your rental property.

OPTIONS FOR SOLE TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

LEAVE – Periodic agreement

Are you a sole tenant in a periodic agreement and want to leave your rental property?

1. What if you just leave?

If you abandon your property your RTA will end, however you will likely have to compensate your landlord. If you can't pay the debt owing you can be listed on a "bad tenants" database, which can make it very difficult to find another rental property. See page 12 for more information about tenant databases. This is why it is really important to make arrangements about your RTA rather than just leaving your rental property.

2. What if your landlord agrees?

You can end your RTA without compensating the landlord if the landlord agrees. If you reach an agreement you must put the agreement in writing and everyone should sign it. The agreement should also state that you do not owe the landlord compensation.

3. What if your landlord doesn't agree?

You can give your landlord a 21 day written termination notice and leave the property. Visit www.tenants.org.au for sample termination notices. You will be responsible for the rent until the end of the 21 day period.

OPTIONS FOR SOLE TENANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

STAY – Fixed term agreement

Are you a sole tenant in a fixed term agreement and want to stay in your rental property?

If you want to stay in your property you do not need to do anything.

However, if you fear the perpetrator of violence and you want an AVO you should speak to the police, your Local Court or your local Women's Domestic Violence Court Advocacy Service (WDVCAS). See pages 2 and 3 and the back of this booklet for more details.

STAY – Periodic agreement

Are you a sole tenant in a periodic agreement and want to stay in your rental property?

If you want to stay in your property you do not need to do anything.

However, if you fear the perpetrator and want an AVO you should speak to the police, your Local Court or your local Women's Domestic Violence Court Advocacy Service (WDVCAS) for assistance applying for an AVO. See pages 2 and 3 and the back of this booklet for more details.

OPTIONS FOR OCCUPANTS

Before you read this part, please make sure you have answered the five questions in Step 1.

LEAVE

Are you an occupant and want to leave your rental property?

If you do not have a RTA you can just leave, however if you have any other type of agreement with the homeowner or other people you are living with, you should give a written termination notice in accordance with that agreement.

STAY

Are you an occupant and want to stay in your rental property?

If you do not have a RTA you do not have any legal right to stay in the property.

However, if you have a final AVO that prevents a tenant from accessing the property, you can apply to the CTTT for an order that you be recognised as a tenant.

LOCKS AND SECURITY

How do you make your property safe and secure?

Generally, your landlord is responsible for ensuring your property is reasonably secure.

Do you need your landlord's permission to remove or add a lock or other security device?

You usually need your landlord's permission to add or remove a lock or other security device. The only exception is where you have a "reasonable excuse".

What is a reasonable excuse?

A reasonable excuse can include:

- in an emergency; or
- if you have an order from the CTTT; or
- after the RTA of a co-tenant is terminated; or
- after a tenant or occupant is prevented from having access to the property.

You should inform your landlord and give your landlord and remaining co-tenants a copy of any new keys.

Do you have to pay to upgrade the security of your property?

If you would like to upgrade the security, generally you will need to pay for it. Depending on where you live, you may be able to get some financial assistance to upgrade the security under the 'Staying Home, Leaving Violence' scheme. See the back of this booklet for contact details.

TENANT DATABASES (TICA)

When can you be listed on tenant databases?

If you have breached your RTA and because of the breach you owe an amount more than the bond for the RTA, or if the CTTT has made a termination order, you can be listed on a tenant database.

What are the consequences of being listed on tenant databases?

Tenant databases list tenants who real estate agents and landlords consider "bad tenants". Landlords and real estate agents are unlikely to rent you a property if your name is on a tenant database.

What can you do if you've been listed on a tenant database?

If you have been listed you can apply to the CTTT for an order removing your name from the database or an amendment of the listing. You would need to explain to the CTTT why it is unjust for your name to be listed on the tenant database.

There are other rules about tenant databases so it is very important to get further legal advice if you have been listed on a tenant database.

HANDY TIP

It is important to always write to your landlord and any other co-tenants about your tenancy, rather than just talking to them. That way you will have a record of what you have said. Remember to keep copies of any letters.

Go to www.tenants.org.au for sample letters.

See the back of this booklet for useful referrals.

REFERRALS

If you are experiencing domestic violence and living in a rental property it is very important that you get legal advice because this area of law can be complex.

If you are a social housing tenant there may be more options available to you. Please speak to your housing provider or your local Tenants Advice and Advocacy Service for more information.

Below is a list of services who can provide you with free advice or referrals about tenancy, housing and domestic violence.

LawAccess	1300 888 529
The Tenant's Union of NSW	www.tenants.org.au or call LawAccess
Your local Tenants Advice and Advocacy Service	www.tenants.org.au or call LawAccess
Your local Community Legal Centre	www.nswclc.org.au or call LawAccess
Your local Women's Domestic Violence Court Advocacy Service	call LawAccess
Domestic Violence Line	1800 656 463 / 1800 671 442 (TTY)
Staying Home Leaving Violence	call Domestic Violence Line
Homeless Persons Line	9265 9087 / 1800 234 566
Your Local Court	call LawAccess
NSW Housing Contact Centre	1300 468 746
Housing NSW After Hours Temporary Accommodation Service	1800 152 152

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