

Ending tenancy early

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 ending a tenancy agreement during the fixed term.

Leaving during the fixed term of your agreement

You may need to end your tenancy during the fixed term of your residential tenancy agreement. There are certain reasons specified in the *Residential Tenancies Act 2010* that allow you to do so.

If you want to leave other than for one of the reasons legally specified you can consider:

- transferring your tenancy to a someone else (you need the landlord's written consent)
- breaking your tenancy agreement (this can be costly).

Ending the tenancy for a legally specified reason

You can end your tenancy:

- on the ground that the landlord has breached the tenancy agreement
- because you would suffer undue hardship if the tenancy continued
- because the premises have become unusable
- on a prescribed 'extraordinary' ground (such as because of domestic violence)
- on the ground that the landlord has increased the rent when you have a 'long-term' fixed-term tenancy agreement of more than 2 years.

If you want to end your tenancy this way, you will have to:

- give the landlord/agent a written *termination notice* with the appropriate notice period (see below), and/or
- apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for a *termination order*.

A termination order ends the tenancy and specifies the day by which you must give the landlord *vacant possession* of the premises (you move out and return the keys).

Breach of agreement by landlord

You can:

- give a termination notice, or
- apply for a termination order – with or without first giving a termination notice.

Alternative to ending the tenancy

Rather than ending the agreement, consider applying to the CTTT for an order that the landlord fixes the

breach (e.g. that they carry out repairs). At the CTTT, you may be able to settle the matter in conciliation with the landlord. Contact your local Tenants Advice and Advocacy Service (TAAS) for advice.

Giving a termination notice

You can give a 14-day termination notice and vacate the premises on the day that you specify.

However, the landlord may make an application to the CTTT to dispute the validity of the notice. If the CTTT is satisfied that the landlord has fixed the breach, it may revoke your termination notice and the tenancy will continue.

Applying for a termination order

The CTTT may make a termination order if it finds that:

- the landlord breached the tenancy agreement
- the breach is sufficient to justify termination.

The CTTT may decide not to end the tenancy if it decides that the landlord has fixed the breach or has taken steps to fix it.

Hardship to you

You can apply for a termination order if you would suffer undue hardship if the agreement continued. You can make the application without giving the landlord a termination notice.

If the CTTT makes a termination order, it may order you to compensate the landlord for their loss of the tenancy. The most compensation you can be required to pay is an amount equal to the break fee for the tenancy (see below).

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.

Prescribed 'extraordinary' grounds

You can give a 14-day termination notice on any of the following grounds:

- you have been offered and accepted a place in social housing
- you have accepted a place in an aged-care facility or you need care in an aged-care facility

- the landlord wants to sell the premises and did not tell you this before entering into the tenancy agreement
- a co-tenant or occupant or former co-tenant or occupant has been excluded from the premises by a final apprehended violence order.

You do not have to pay the landlord compensation or other additional amount for ending the agreement early.

Rent increase – long-term fixed-term agreement

You can give a 21-day termination notice. You do not have to pay the landlord compensation or other additional amount for ending the agreement early.

The termination notice

The termination notice must be in writing, signed by you and set out:

- the premises concerned
- the day by which you will give the landlord vacant possession
- the ground (if any) for the notice.

You must properly 'serve' the notice on the landlord/agent in person, by post, by fax, or hand-delivered in an addressed envelope to a mailbox at their residential or business address. If serving by post, you must allow an extra 4 working days for delivery.

Keep a copy of the notice for yourself and record how and when you sent or delivered it.

Withdrawal of termination notice

You may withdraw a termination notice at any time with the landlord's consent. You may give a further notice on the same or another ground however.

Transfer of tenancy

You can transfer the whole tenancy to another person if the landlord gives written consent. The landlord is entitled to withhold consent.

If you are a co-tenant and want to transfer your tenancy when at least one of the original tenants will remain, the landlord must not 'unreasonably' withhold consent.

See Factsheet 18: *Transfer and sub-letting*.

Breaking the agreement

Write to the landlord to tell them you want to leave. Give them as much notice as possible. Try to get their consent in writing.

If the landlord does not consent, you can still end the tenancy by vacating the premises and handing back the keys. However, the landlord can apply to CTTT for orders that you have abandoned the premises and for compensation.

Compensation to the landlord

The landlord may consent to you breaking the agreement without having to pay them compensation. If so, get their undertaking in writing.

If your tenancy agreement specifies a break fee, this is the amount you will have to compensate the landlord (see below).

If the CTTT makes an order that you have abandoned the premises, it may order you to compensate the landlord for any loss (including loss of rent) caused by the abandonment.

The landlord must take all reasonable steps to mitigate (minimise) the loss however. They are not entitled to compensation for any loss that they could have avoided by taking those steps.

Stop paying rent on the day you vacate the premises and hand back the keys. Any claim by the landlord for lost rent after this day is a claim for compensation which can either be negotiated between you and the landlord or decided by the CTTT.

Break fees

For fixed-term agreements of 3 years or less, the break fee is:

- an amount equal to 6 weeks rent, if less than half of the fixed term has expired, otherwise
- an amount equal to 4 weeks rent.

The same applies to fixed-term agreements of more than 3 years unless the tenancy agreement specifies a break fee of a certain amount.

January 2011

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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