

Mortgagee repossession

When a landlord is unable to make loan repayments, the mortgagee might take possession of the property in order to sell it and recover their loss. This is referred to as mortgagee repossession.

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Legal process of repossession

To take back possession of the property, the mortgagee needs to obtain an order from the Supreme Court. If the court makes an order for possession, the tenant must be notified. The court can make an order even if the tenant does not know about the proceedings.

The mortgagee might send the tenant a written notice asking the tenant to pay the rent to them instead of the landlord or agent. Tenants should follow the mortgagee's instructions.

Notice to vacate

Regardless of how much time (if any) remains on a tenant's fixed term agreement, the court order will end the tenancy.

Supreme Court orders for possession are enforced by the NSW Sheriff's Office. A Sheriff's Officer will serve the tenant with a notice giving the tenant at least **30 days** to vacate the property.

If the tenant does not move out, the Sheriff can remove them from the property. A tenant can try to negotiate an extension to give them more time to move out.

Rent-free compensation

As a form of compensation, the tenant doesn't have to pay any rent for 30 days after they're given the official notice to leave.

If the tenant has paid rent in advance, they are entitled to a refund. Tenants can apply to the Tribunal if the landlord or agent does not pay the money back.

Access to show buyers

The mortgagee can show people around the property, but only if they have given the tenant reasonable notice and agreed on the time and date of the inspection.

Refund of rental bond

The mortgagee can authorise Fair Trading to release the bond to the tenant once they take over the property. The tenant can ask for this to happen while they are still living at the property.

Staying in the property

If the mortgagee had previously been notified of the tenancy agreement, they need to honour the agreement.

In most cases, the landlord would have taken out the mortgage before finding the tenant which means the mortgagee would have no prior notice and would not have to honour the agreement.

This does not stop a tenant from approaching the mortgagee, or somebody acting on their behalf, and requesting to continue living in the property, at least until it is sold.

Court or Tribunal ordered tenancies

If the tenant can prove that they need to remain in the property, they can apply to either the Supreme Court, if the proceedings have not been finalised, or to the Tribunal if the possession order has already been made.

If a tenant is considering this option, it may be best to seek legal advice.

Disclosure of mortgagee possession

If the landlord or agent was aware of the mortgagee's court action for possession before the tenant signed the agreement and did not tell the tenant, the tenant can give a 14 day termination notice to end the tenancy.

The tenant can also apply to the [NSW Civil and Administrative Tribunal](#) for an order to end the tenancy. The Tribunal may order the landlord to compensate the tenant for any costs incurred from ending the tenancy.

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23-03-20