

Ending a residential tenancy

Have your say on domestic violence rental laws

The NSW Government is reviewing the laws that allow tenants to end their tenancy, without penalty, if they or their children are experiencing domestic violence.

[Have your say on domestic violence rental laws](#)

[Evictions during COVID-19](#)

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General information

A tenancy agreement is a legally binding agreement that can only be ended in certain ways.

A tenancy will usually be terminated by the landlord or the tenant giving notice to the other party, with the tenant vacating by the date specified in the termination notice.

The landlord or the tenant will need to give the other party a written termination notice with the applicable notice period to end a tenancy.

In some cases, the landlord or tenant can apply directly to the Tribunal for a termination order without needing to issue a termination notice.

Minimum notice period

The notice period depends on the type of agreement (fixed-term agreement or periodic agreement) and the reasons for termination.

These notice periods are designed to give tenants enough time to find another rental property, and landlords enough time to find a tenant.

A landlord and tenant can agree to end the tenancy at any time.

List of minimum notice periods

Reason for termination	Fixed term / Periodic agreement	Minimum notice landlord must give	Minimum notice tenant must give
Domestic violence	Either	N/A	None
End of the fixed term agreement *	Fixed only	30 days	14 days
End of the periodic agreement (no specified reason) *	Periodic only	90 days	21 days
End of the periodic employee or caretaker agreement (no specified reason) *	Periodic only	28 days	21 days
Landlord has entered into a contract to sell the property requiring vacant possession	Periodic only	30 days	N/A
Breach of agreement	Either	14 days	14 days (or apply to the Tribunal)
Non-payment of rent or water usage charges or utility charges	Either	14 days	N/A
Tenant or other occupant caused serious damage or injury	Either	None**	N/A
Tenant or other occupant using the property illegally	Either	None**	N/A
Tenant or other occupant threatens, abuses, intimidates or harasses	Either	None**	N/A

Reason for termination	Fixed term / Periodic agreement	Minimum notice landlord must give	Minimum notice tenant must give
Hardship	Either (landlord) Fixed only (tenant)	None**	None**
Long term tenancies	Periodic	None**	N/A
Remaining occupants after tenancy ends	N/A	14 days	N/A
Breach of information disclosure under section 26	Either	N/A	14 days
Rent increase during fixed-term agreement of 2 years or more	Fixed only	N/A	21 days (and before the increase starts)
Early termination without penalty (i.e. moving to an aged-care facility or social housing, landlord decides to sell property or property is listed on the LFAI register)	Fixed only	N/A	14 days
Co-tenant terminates their tenancy	Periodic only	N/A	21 days
Death of a co-tenant	Either	N/A	21 days
Death of a sole tenant	Either	None	None (by legal representative)
Property destroyed, uninhabitable, unusable or is compulsorily acquired	Either	None	None
Other legal reasons	N/A	Apply to the Tribunal	Apply to the Tribunal

*Does not apply to tenants who have occupied the property for more than 20 years

** No notice required but must apply to the NSW Civil and Administrative Tribunal (the Tribunal)

Termination notice

A termination notice **must**:

- be in writing
- be signed and dated by the party giving the notice
- include the address of the rented property
- state the day the tenancy agreement is terminated (and by which the tenant will need to move out), and
- include the reasons for termination (if applicable).

Termination notices can be given at any time and do not have to line up with the rent payment cycle.

After a landlord gives a termination notice, they can give another notice on different grounds if necessary.

For example, if a landlord gives 90 days notice to terminate a periodic tenancy without a reason, and the tenant then doesn't pay rent for 14 days, the landlord can give a termination notice for the non-payment of rent.

Template termination notice

A landlord or a tenant may write the notice themselves or use our templates:

[Sample termination notice for landlords and agents](#)

[Sample termination notice for tenants](#)

Serving a notice

When serving a termination notice, it's important that the correct procedures are followed. Visit [serving notice to tenants](#) for more information.

Breaking a fixed-term agreement early

When a tenant signs a fixed term agreement, they are committing to stay for the full term.

If a tenant wants to move out before the end of the fixed term, there could be costs involved.

There are some situations where a tenant can end a fixed-term agreement without penalty.

A tenant should give the landlord as much notice as they can if they need to end the agreement early.

A tenant should also make it as easy as possible for the landlord or agent to show the property to potential new tenants.

Breaking a fixed-term agreement signed from 23 March 2020

For agreements of three years or less

Mandatory break fees may apply which is payable based on the stage of the agreement.

A break fee is a penalty a tenant agrees to pay if they move out before the end of the fixed term.

If the mandatory break fee applies, the set fee payable is:

- four weeks rent if less than 25 per cent of the agreement has expired
- three weeks rent if 25 per cent or more but less than 50 per cent of the agreement has expired
- two weeks rent if 50 per cent or more but less than 75 per cent of the agreement has expired
- one weeks rent if 75 per cent or more of the agreement has expired.

For agreements more than three years

A landlord may still seek compensation by applying to the NSW Civil and Administrative Tribunal (the Tribunal).

These costs may include loss of rent, advertising and a letting fee if the landlord uses an agent.

The landlord or agent may negotiate an agreed amount of compensation with the tenant.

If the tenant and landlord are unable to agree on the amount of compensation, the landlord may claim from the bond or apply to the Tribunal for an order that the tenant pays the landlord a certain amount of compensation.

The landlord will need to show the Tribunal what (reasonable) steps they took to minimise their losses (e.g. advertising for a new tenant without delay).

Breaking a fixed-term agreement signed before 23 March

The former rules apply and parties should check their agreement under 'Additional terms' to see if the agreement includes the optional break fee clause.

Optional break fee included in agreement

The optional break fee clause will apply if the break fee clause has not been deleted from the tenancy agreement. The break fee payable will be either:

- a. six weeks rent if the tenant leaves in the first half of the fixed-term agreement, or
- b. four weeks rent if the tenant leaves in the second half of the fixed-term agreement.

The same optional break fee clause applies for fixed-term agreements of more than three years, unless the tenancy agreement specifies a break fee of another amount.

Optional break fee not included in agreement

The optional break fee clause will not apply if the break fee clause has been deleted from the tenancy agreement.

A landlord may still seek compensation by applying to the Tribunal.

These costs may include loss of rent, advertising and a letting fee if the landlord uses an agent.

The landlord or agent may negotiate an agreed amount of compensation with the tenant.

If the tenant and landlord are unable to agree on the amount of compensation, the landlord may claim from the bond or apply to the Tribunal for an order that the tenant pays the landlord a certain amount of compensation.

The landlord will need to show the Tribunal that what (reasonable) steps they took to minimise their losses (e.g. advertising for a new tenant without delay).

Breaking a fixed-term agreement without penalty

In some circumstances, a tenant can break a fixed-term agreement early without penalty.

A tenant can give 14 days' written notice to end an agreement early without penalty if:

- they have accepted an offer of social housing (e.g. from DCJ Housing)
- they need to move into an aged care facility or nursing home (not a retirement village)
- a landlord has put the property on the market for sale during the fixed-term, and the tenant was not told before signing the agreement that the property would be sold
- if the property becomes listed on the Loose Fill Asbestos Insulation register during the tenancy or was previously listed without the landlord or agent disclosing that information to the tenant.

A tenant still needs to pay the rent until they hand back possession of the property.

Ending a tenancy due to hardship to the landlord or tenant

A landlord can apply to the Tribunal to end the agreement on hardship grounds if there are special circumstances.

A tenant can also apply to the Tribunal to end the agreement on hardship grounds if there are special circumstances and they are within the fixed term of the agreement. No prior notice is required.

A landlord can apply the Tribunal to end the tenancy on hardship grounds at any stage of the tenancy.

A tenant can apply to the Tribunal to end the tenancy on hardship grounds if tenant is under a fixed term agreement. A tenant can ask for an urgent hearing but will need to keep paying the rent.

It is up to the party claiming hardship to explain the situation and provide evidence to the Tribunal to prove that there are grounds for ending the agreement.

The Tribunal may make a termination order if it is satisfied that the party claiming hardship would suffer undue hardship if the tenancy continues.

Ending a tenancy because of domestic violence

A tenant can end their fixed-term or periodic tenancy immediately, without penalty, if the tenant or their dependent child is in circumstances of domestic violence.

A tenant or their dependent child is in circumstances of domestic violence if they:

- were the victim of a domestic violence offence during the tenancy
- are protected by an in-force provisional, interim or final Domestic Violence Order (DVO)
- are protected against family violence by an in-force family law injunction
- have been declared by a 'competent person' (a professional who can make a declaration) to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the current tenancy.

To end a tenancy in circumstances of domestic violence, a tenant will need to give:

- the landlord or the landlord's agent a domestic violence termination notice and attach one of the following permitted forms of evidence:
 - certificate of conviction for the domestic violence offence
 - family law injunction
 - provisional, interim or final Domestic Violence Order
 - declaration made by a competent person in the prescribed form.
- each co-tenant a domestic violence termination notice.

A minimum notice period is not required. The termination notice must include a termination date, which can be on the same day that the notice is given or a date after the notice is given.

A domestic violence termination notice does not need to be given in person.

Sample termination notices

Sample domestic violence notice to terminate tenancy – from tenant to landlord or agent

Sample domestic violence notice to terminate tenancy - from tenant to each co-tenant

Who can make a domestic violence declaration?

Previously, only registered medical practitioners were allowed to complete a domestic violence declaration.

From 11 December 2020, a wider range of professionals (competent persons) may provide a declaration.

- Registered health practitioners who hold either general or specialist registration under the *Health Practitioner Regulation National Law (NSW)*, in one of the following health professions:
 - Aboriginal and Torres Strait Islander health practice
 - Chinese medicine
 - chiropractic
 - dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist)
 - medical
 - medical radiation practice
 - midwifery
 - nursing
 - occupational therapy
 - optometry
 - osteopathy
 - paramedicine
 - pharmacy
 - physiotherapy
 - podiatry
 - psychology
- social workers who are a member of the Australian Association of Social Workers,
- employees of a NSW government agency that work in child protection,
- employees of non-government agencies that receive government funding to provide services relating to domestic violence/sexual assault or refuge/emergency accommodation, and
- approved counsellors under the *Victims Rights and Support Act 2013*.

This declaration is one of 4 acceptable forms of evidence a tenant can use to attach to their termination notice, to end their tenancy without penalty.

The declaration has been made available in response to concerns that many victims of domestic violence do not feel comfortable going to the police or engaging with the justice system.

Forms

Declaration by competent person for tenant

Declaration by competent person for tenant's dependent child

Moving out

Condition of property

At the end of a tenancy, the tenant is responsible for leaving the property as near as possible to the same condition as when they started living in it.

The tenant is responsible for negligent, irresponsible or intentional actions that cause damage to the property.

However, the tenant is not responsible for '**fair wear and tear**'.

The property's original condition should be set out in the condition report.

At the end of the tenancy, the landlord or agent and the tenant must carry out a final inspection of the property.

The original condition reports should be completed by the landlord or agent, and the tenant.

The landlord or agent must give the tenant a reasonable opportunity to attend the final inspection.

However, if the other party does not show up, the report may be filled out without them.

Examples of 'fair wear and tear' and damage

Fair wear and tear is the deterioration that occurs over time to the property. This table provides examples of fair wear and tear compared to damage.

Fair wear and tear	Damage
Faded curtains or frayed cords	Missing or torn curtains
Furniture indentations and traffic marks on the carpet	Stains or burn marks on the carpet
Scuffed up wooden floors	Badly scratched or gouged wooden floors

Fair wear and tear	Damage
Faded, chipped or cracked paint	Unapproved, poor quality paint job
Worn kitchen benchtop	Burns or cuts in bench top
Loose hinges or handles on doors or windows and worn sliding tracks	Broken glass
Water stains on carpet from rain through leaking roof or bad plumbing	Water stains on carpet caused by overflowing bath or indoor pot plants
Paint worn off wall near light switch	Damage to paint caused by removing posters stuck with blu-tack or sticky tape

Bond refund or claim

A tenant must pay the rent up to and including the day their termination notice period ends and they vacate the property.

If a tenant does not owe the landlord money at the end of their tenancy and there is no damage to the property, the bond paid at the beginning of the tenancy should be refunded in full.

If the landlord or agent believes the tenant owes money, they can make a claim against the bond.

Main reasons a landlord can make a claim against the bond

- unpaid rent
- the reasonable cost of repairing damage to the property that is beyond fair wear and tear
- unpaid water usage charges, as long as the landlord requested payment within three months of receiving the bill
- any 'break fee' or other charges payable as a result of the tenant breaking the tenancy agreement early
- the reasonable cost of cleaning any part of the property not left reasonably clean, considering how clean the property was at the start of the tenancy, and
- the reasonable cost of having the locks changed, or other security devices replaced, if the tenant doesn't return all keys and security devices they were given.

This is not a complete list. There may be other legitimate reasons for a landlord or agent to make a claim against the tenant's bond.

The steps below outline the process for refunding the bond to the tenant or making a claim against the bond to compensate the landlord for outstanding expenses.

When using Rental Bonds Online

Claims for online bonds must be submitted through [Rental Bonds Online \(RBO\)](#).

When using the paper form

The [paper form](#) is used for bonds that were not lodged using Rental Bonds Online. The form should include a tenant's bank details as refunds are by direct deposit only.

If a landlord or a tenant can't get the other party to agree to sign the form, they should lodge the form without the other party's signature.

Fair Trading will send a notice to the party who wouldn't sign the form, giving them 14 days to either settle the matter or contest the claim by applying to the Tribunal.

If the party that refused to sign the form does not apply to the Tribunal, the bond will be paid out as per the initial claim. But, if that party does apply to the Tribunal, the bond will be held by Fair Trading until the dispute is settled.

If the landlord and the tenant reach a different agreement after one of them has lodged a claim, then a new claim form will need to be lodged with Fair Trading with both parties' signatures. Otherwise, the first claim lodged will be paid out after 14 days.

Once the bond has been paid out, either party can still apply to the Tribunal within six months.

Only send the claim form to NSW Fair Trading.

Landlord or agent making a claim on the bond

If a landlord or agent lodges a claim without the tenant's signature, the landlord or agent must provide the tenant copies of the following within seven days of making the claim:

- a copy of the final condition report, and
- copies of any estimates, quotes, invoices or receipts for the work.

Copies of these documents also need to be sent to [DCJ Housing](#) if they paid all or part of the bond.

Not providing these documents within the time period required can lead to penalties.

Interest

Most of the income earned from the collective pool of rental bonds is used to fund a range of services that benefit all tenants, such as funding the [NSW Civil and Administrative Tribunal](#) and organisations across New South Wales under the [Tenants Advice and](#)

Goods left behind

Tenants are responsible for ensuring that their belongings are removed from the property at the end of the tenancy.

If goods are left behind, landlords and agents must follow the correct process for dealing with them. See uncollected goods for more information.

Dealing with goods left behind

How a landlord deals with goods left behind depends on the goods.

In some cases, the landlord needs to give the former tenant notice that they are holding the tenant's goods and will dispose of the goods after a certain time if they are not collected.

See uncollected goods for more information.

The tenancy must have ended

Before a landlord takes any action, they must be certain the tenancy has ended.

This is particularly important if neither the landlord nor tenant have given notice to end the agreement.

The property may look abandoned, but the tenant may have gone on holiday, be away for work, or be in hospital.

The landlord should try to contact the tenant, check with neighbours or check the tenant's workplace first.

If a landlord has any doubts about whether the property has been abandoned, they can apply to the Tribunal.

If no doubt exists, the landlord does not need a Tribunal order. They can simply change the locks to secure the property and deal with any goods that have been left behind.

Dealing with goods left behind

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In some cases, the landlord needs to give the former tenant notice that they are holding the tenant's goods and will dispose of the goods after a certain time if they are not collected.

See uncollected goods for more information.

Tenants reclaiming goods

A former tenant, or anybody else with a legal interest in the goods can reclaim the items at any time while they are in the landlord's possession.

A landlord can ask for any actual costs that they incurred in removing, storing, maintaining or insuring the goods. However, the landlord cannot refuse to return the belongings because the former tenant owes rent or money for some other reason.

If a landlord does not follow the process required when dealing with goods left behind, a tenant who returns for their goods could also apply to the Tribunal for compensation for any damage to their belongings while they were in the landlord's possession.

If a landlord follows the required process, they can also apply to the Tribunal for an order if the tenant disputes having to pay any relevant fees where applicable.

See [uncollected goods](#) for more information.

Disputes about ending an agreement

Where possible, landlords, agents and tenants should try to resolve disputes about ending a tenancy and reach an agreement between themselves.

The best place to start is to carefully read the terms of the agreement.

For assistance in resolving rental problems, visit the [resolving rental problems](#) page.

If a tenant refuses to leave

If a tenant has been given the appropriate notice to vacate the rental property and has not left by the date specified in the termination notice, the landlord will need to apply to the Tribunal for termination and possession orders.

If the tenant does not comply with the Tribunal order, only a Sheriff's Officer can legally remove the tenant from the rental property under a warrant for possession issued by the Tribunal or a court.

Only a Sheriff's Officer can enforce a warrant for possession.

A tenant cannot be locked out of their home unless a Sheriff's Officer is enforcing a warrant for possession issued by the Tribunal or a court.

Locking a tenant out of their home without following the correct processes is illegal and heavy penalties.

Tenancy databases

Tenancy databases hold information about tenants that agents use to screen prospective tenants.

The databases can only be used by members who pay membership fees.

There are a number of tenancy databases that operate in NSW, including TICA, National Tenancy Database and Trading Reference Australia.

These databases are run by private companies, not by the Government or the Tribunal.

Who can be listed

A tenant can only be listed on a database if they are named on the tenancy agreement as a tenant.

Approved or unapproved occupants, visitors or children cannot be listed.

When can a tenant be listed?

A tenant can only be listed on a database after their tenancy has ended. Tenants cannot be listed on a database if they fall behind with a rent payment, are given a termination notice or are not looking after the property in a satisfactory way.

A tenant can only be listed on a database for one or both of the following reasons:

- they have left the property and owe money for a breach of the tenancy agreement that is more than the rental bond
- the Tribunal has made an order terminating the agreement because of something the tenant has done wrong.

Any information recorded on a database must identify the reason for the listing in an accurate, complete and clear way. For example, 'eviction order given on grounds of rental arrears, tenant owes \$500 in rent above the bond'.

Tenancies terminated due to domestic violence

Landlords and agents cannot list a tenant on a tenancy database if the tenant ended their tenancy in circumstances of domestic violence .

This helps to limit the potential negative impact a domestic violence termination could have on survivors trying to secure alternative rental accommodation.

Notifying the tenant of a listing

Landlords or agents must let tenants know in writing if they want to list them on a tenancy database.

They must give the tenant at least 14 days to object before listing them on the database.

A tenant can apply to the Tribunal if they think the proposed listing is incorrect or unjust.

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