

# Moving out

## Information for renters

Either the landlord or the tenant (renter) usually terminates a tenancy by giving notice to the other party.

A notice of termination must:

- be in writing
- state the address of the premises
- be signed and dated
- allow the required period of time
- give the date on which the tenant intends to or is requested to move out (NB do not use words such as 'by' or 'on or before' in the notice)
- give full details of breaches (if any) or reasons for ending the agreement
- and, when given to a tenant, include a statement that information about their rights and obligations can be found in the tenancy agreement.

The notice can be posted or given personally. A notice cannot be stuck to or put under a door by the person sending the notice. The notice period is counted from the day after the notice is served.

**IMPORTANT** – If the notice is sent by post, at least 4 working days (not including the day the notice was sent) must be added to the amount of notice, to allow time for the notice to be delivered.

## Notice periods

Most agreements are for a fixed term (eg. six or twelve months). When the fixed term period of the agreement is due to run out either party can give 14 days written notice to end the tenancy. This notice can be served up to and including the last day of the fixed term. A continuing agreement is when the fixed term expires and the tenant remains in the property or if there is no fixed term agreement.

Once the fixed term period has ended:

- the tenant must give at least 21 days written notice
- the landlord must give at least 60 days written notice.

## Notice on sale of premises

If the premises are sold and vacant possession is required in the contract of sale, the landlord must give the tenant at least 30 days written notice (after the contracts of sale have been exchanged and before settlement takes place). This is only applicable to a continuing tenancy agreement. With a fixed term agreement the tenant is entitled to the balance of any time remaining on the fixed term period of the agreement. In these situations, the purchaser has little option but to see out this period as the tenancy is inherited with the sale. However, the purchaser and tenant can negotiate an agreement for the tenant to move out earlier and be compensated. Any agreement reached should be put in writing.

## Notice of breach

A notice of termination may be given at anytime if either party seriously or persistently breaches a term of the agreement, or if the tenant is more than 14 days in arrears of rent. At least 14 days written notice must be given.

## Breaking a tenancy agreement early

If the tenant wants to vacate prior to the end of a fixed term, they should give as much notice as possible, preferably in writing and keep a copy of the letter.

They should state the exact date they intend to leave and that they want the landlord/agent to find a new tenant. The landlord is not obligated to find a new tenant. However, both the tenant and landlord must minimise any loss that may result from the agreement ending early. Making the property readily available for inspection may help to reduce the costs involved in finding a replacement tenant. Breaking an agreement early can be costly.

The landlord can claim compensation for any losses they incur as a result of a tenant ending the agreement early – such as:

- rent until new tenants move in or the existing agreement runs out (whichever happens first)
- a re-letting fee (usually one week's rent) when the property is let by an agent who charges the landlord a fee for finding new tenants
- advertising costs
- fee for preparation of a new agreement
- the difference between the current rent and the new rent for the rest of the fixed term if the premises can only be re-let at a lower rent.

For a landlord to successfully claim compensation, they must be able to show that their loss was caused by the tenant breaking the agreement early, not by other factors. For example, if a tenant breaks the agreement just prior to the expiry date, the full amount of re-letting and advertising charges may not be able to be passed on since the landlord would have incurred these expenses shortly anyway. Both parties have a duty to keep their losses to a minimum. This means that they should make a reasonable effort to find a new tenant, otherwise any claim they later make may be reduced by the Consumer, Trader and Tenancy Tribunal (CTTT).

## Fair wear and tear

At the end of a tenancy, the responsibility of the tenant is to leave the premises in nearly the same condition, fair wear and tear excepted, as set out in the original Condition Report.

Fair wear and tear means the deterioration that occurs over time with the reasonable use of the premises by the tenant and the ordinary operation of natural elements, even though the premises receive reasonable care and maintenance.

## Terminations by the Tribunal

The CTTT can make an order against a tenant ending the tenancy and giving possession of the premises to the landlord. The possession order will usually give the tenant between 5 and 28 days to leave the premises, but not in all cases.

If the tenant is not out by the date of the order, the landlord can get a 'warrant for possession' from the Registry of the CTTT and go to the Sheriff's Office to have it enforced. A Sheriff's Officer can remove a tenant from the premises, with police help if needed.

## A landlord cannot evict a tenant without a Tribunal Order

Locking out or evicting a tenant without a Tribunal Order is illegal. A landlord/agent must follow the correct process as stated in the legislation.

## Application to the Tribunal without notice

The landlord can apply directly to the CTTT for an order for possession of the premises without giving a tenant notice of termination, but only in the following circumstances:

- the tenant has injured or is likely to injure the landlord, agent or neighbours
- the tenant or their guests have deliberately or recklessly caused serious damage to the premises.

## Rehearings

Rehearings are not an automatic right. An application can be made to the CTTT for a matter to be re-heard but only if the reasons are justified. The application must be made within 14 days after the date of notification of the CTTT's order.

The applicant must be able to show that the decision was not 'fair and equitable' or it was against the weight of evidence or significant new evidence is now available that was not available at the time of the hearing and that a rehearing would lead to a different result.

## Can a tenant be evicted for complaining?

A landlord cannot evict a tenant for asserting their rights. If the tenant refuses to leave the premises, the landlord will need to apply to the CTTT for a termination and possession order.

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The tenant should ensure they attend the CTTT hearing and let the Tribunal Member know about the landlord's actions. The CTTT can refuse to grant a termination order to the landlord.

## Undue hardship

A tenant or landlord can, at any stage of the tenancy, apply to the CTTT to end the agreement because in the special circumstances of the case they would suffer undue hardship if the tenancy were to continue. No prior notice is required. The applicant who claims hardship must satisfy the CTTT that there are grounds for ending the agreement.

If the CTTT makes an order to end the tenancy, the applicant may be ordered to pay compensation to the other party.

**IMPORTANT** – If a tenant is under the threat of eviction, it is important to attend a CTTT hearing so that the Member is able to hear both sides of the dispute. The tenant may be given more time to move out or, if they have a good case, the Tribunal may decide they can stay.

## Landlords who default on their loans

When a landlord is unable to pay back a loan taken out to purchase an investment property, the mortgagee (the lender – normally a bank or other financial institution) usually wants to take possession of the property in order to sell it and recover their money.

The mortgagee can apply to the Supreme Court for an Order to do this. If the Order is granted, the residential tenancy agreement is terminated, and the mortgagee becomes entitled to possession of the premises to the exclusion of the tenant. This can occur at any time throughout the tenancy, even during a fixed term.

The tenant may try to negotiate with the mortgagee directly to allow them to remain in the premises or give them more time to move out.

They may also apply directly to the Supreme Court for Orders and can seek financial compensation from the former landlord. (However, the landlord's ability to pay may be severely limited given the circumstances.)

## Final inspection

At, or as soon as possible after, the end of the tenancy, both the tenant and the landlord/agent should carry out a final inspection of the premises and complete the original Condition Report.

However, if a reasonable opportunity is given to the other party to be there and they do not show up, the report may be filled out in their absence.

**IMPORTANT** – The original Condition Report can be used as evidence if a dispute arises over the condition of the premises at the end of the tenancy.

## Bond refunds

At the end of the tenancy, after the final inspection, a 'Claim for refund of bond money' form should be filled out by the landlord/agent and given to the tenant to sign and then sent to the Office of Fair Trading.

Any disagreement over how the bond is to be paid out should first be discussed between the parties. If agreement cannot be reached, either party may send a claim form to Fair Trading without the signature of the other party. A notice will be sent to the other party advising them of the claim and giving them 14 days to apply to the Tribunal to dispute it. If no reply is received within 14 days the bond will be paid out as per the claim form.

No matter who applies to the CTTT, it is always up to the landlord to prove any claim on the bond. 'Claim for refund of bond money' forms can be obtained from any Fair Trading Centre, the Fair Trading website or Commonwealth Bank branches.

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)



## Returning keys

The tenant is responsible for returning all copies of keys, other security devices and remote control devices given to them at the start of the tenancy by the landlord or agent.

## Tenancy advisory services

Free tenancy advice, information and advocacy services for private and public tenants are provided by community organisations throughout NSW.

### Tenants' Advice and Advocacy Services (TAAS)

Inner Sydney	9698 5975
Inner Western Sydney	9559 2899
Eastern Sydney	9386 9147
Southern Sydney	9787 4679
Western Sydney	9891 6377
Northern Sydney	9884 9605
South Western Sydney	4628 1678
Central Coast	4353 5515
Hunter	4969 7666
Mid North Coast	1800 777 722
Northern Rivers	1800 649 135
Illawarra/South Coast	1800 807 225
New England and Western NSW	1800 836 268
South West NSW	1800 642 609
Aged Tenants Service	9281 9804 1800 451 488

Fair Trading enquiries 13 32 20  
TTY 1300 723 404  
Language assistance 13 14 50

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

## Aboriginal tenancy advisory services

Greater Sydney – servicing Sydney Metro, Hawkesbury, Wyong, Gosford, Blue Mountains and Wollondilly	9564 5367 1800 772 721
Southern NSW	1800 672 185
Western NSW	1800 810 233
Northern NSW	1800 248 913

### Tenants Union hotline

Tel. 9251 6590 or 1800 251 101  
<http://www.tenants.org.au/>

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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