

# Ending Tenancy Policy NSW

## 1. Purpose

The purpose of this policy is to explain the circumstances and action to be taken when a tenant ends a tenancy or HOME in PLACE (Australia) Limited ends a tenancy.

## 2. Scope

This policy applies to all tenancies managed by HOME in PLACE in NSW.

## 3. Policy Statement

This policy covers ending a tenancy within the legal requirements of the *Residential Tenancies Act 2010*. The aim of this policy is to:

- Ensure that the legal requirements for ending a tenancy are understood and adhered to by HOME in PLACE employees and tenants;
- Ensure that the end of a tenancy is fair, efficient and effective for all;
- Adhere to our legal obligations as landlord and tenant under the Residential Tenancies Act 2010;
- Ensure the principles of natural justice are applied; and
- Have efficient administration and record keeping at the end of tenancy

HOME in PLACE recognises that tenancies end for a variety of reasons. This includes where a tenant indicates they wish to leave their tenancy and move into the private rental market, interstate relocation or into home ownership. On other occasions it may be necessary for HOME in PLACE to initiate ending a tenancy due to the sale or termination of a leasehold property, renovations, disposal or redevelopment.

HOME in PLACE may also initiate a termination of a tenancy where there is a breach of the *Residential Tenancies Act 2010*. Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity to remedy the breach. HOME in PLACE is committed to ensuring the long-term sustainability of tenancies within the context of maintaining the viability of the organisation. HOME in PLACE will always endeavour to effectively resolve any breaches and disputes relating to the tenancies. HOME in PLACE views legal proceedings as an action of last resort when all possible avenues, both internal and external, of resolving a breach or dispute have been exhausted.

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## Guiding Principles

HOME in PLACE will:

- Advise our tenants of their rights and responsibilities when a Notice of Termination is issued and when action is taken at the NSW Civil and Administrative Tribunal (NCAT) that may result in their tenancy being terminated;
- Ensure tenants have access to tenancy advice, interpreters and support if their tenancy is threatened or is ending;
- Only issue Notices of Termination in accordance with the Residential Tenancies Act 2010;
- Advise tenants what is required of them to meet their legal obligations when their tenancy ends, regardless of the reason for the tenancy ending; and
- Ensure any goods left behind at the end of a tenancy are managed in accordance with the requirements of the Uncollected Goods Act 1995..

## Reasons for Ending a Tenancy

### *Tenancy ended by tenant*

If a tenant wants to end a residential tenancy agreement, they are required to provide the landlord with a termination notice giving the following notice periods in accordance with the *Residential Tenancies Act 2010*:

- Fourteen days' notice before the end of the fixed term to end the agreement on or after the end of a fixed term;
- Twenty one days' notice to end a continuing agreement;
- Fourteen days' notice if the landlord has breached the residential tenancy agreement;
- Fourteen days' notice to end a fixed term agreement without compensation if the tenant:
  - has accepted an offer of social housing accommodation;
  - has accepted a place in an aged care facility, or
  - has been notified by the landlord of their intention to sell the property and was not notified of this before entering into the residential tenancy agreement, or
  - a co-tenant, occupant, former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the property.

HOME in PLACE may, at its discretion, agree to lesser periods of notice. All such decisions will be made by the relevant Executive Manager.

### *Tenancy terminated by HOME in PLACE*

Circumstances leading to a tenancy being ended by HOME in PLACE include, but are not limited to:

- Breaches of the Residential Tenancy Agreement (RTA);
- Management objectives;
- Abandonment by the tenant;
- The making of an apprehended violence order;
- Death of a tenant;
- Tenant has reached/exceeded the maximum term of tenure or no longer meets the specific eligibility criteria for the relevant program;
- Sale of the property; and Property is uninhabitable or destroyed.

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## *End of tenancy for a breach of the Residential Tenancy Agreement*

- HOME in PLACE takes action to end a tenancy for a breach only after all other options have been fully explored;
- When HOME in PLACE takes action at the NCAT as the landlord, the objective is to maintain the tenancy whenever an acceptable specific performance agreement can be reached with the tenant; and
- An order terminating a tenancy agreement, when a tenant is willing to make an agreement, will only be sought in cases of repeated unresolved breaches.

## *End of tenancy for management objective*

A tenant may be asked to relocate from their property for management reasons, this may include:

- Over or under occupation;
- Needing the property for another tenant, for example, an applicant with special needs and the current occupants of the property do not require that feature;
- Redevelopment of the site; and
- renovation of the property.

If HOME in PLACE needs to terminate a tenancy for management purposes, a tenant will be made two reasonable offers of alternative housing.

HOME in PLACE is committed to transferring tenants by consent and avoiding legal action. However, if a tenant declines two reasonable offers of alternative housing, HOME in PLACE will terminate the tenancy in accordance with section 148 of the *Residential Tenancies Act 2010*. If a tenancy is ended under these provisions, HOME in PLACE will follow the process required by the *Residential Tenancies Act* and the procedures approved by the Minister.

## *When a landlord terminates a leasehold tenancy*

Where a tenancy agreement is legally terminated by the property owner, and the end of tenancy is not due to the action of the tenant, HOME in PLACE will seek to rehouse the tenant in general social housing before the notice expires.

In these instances, HOME in PLACE will work with tenants to locate a new property. As the property must be handed back to the owner within a defined timeframe, tenants will only be made **one** valid offer of housing. If this offer is declined, tenants will need to resolve their own housing need.

## *End of tenancy due to abandonment*

If a property has been abandoned HOME in PLACE may take immediate possession of the property or make an application to the NCAT to have the tenancy terminated.

## *End of tenancy due to an apprehended violence order (AVO)*

If a final AVO prohibits a tenant or co-tenant from having access to the property, the tenancy of that person under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any tenants/co-tenants that are not subject to the AVO.

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## *Death of a sole tenant*

When a sole tenant dies, the tenancy does not immediately end. Either HOME in PLACE or the person responsible for the deceased tenant's estate can give a termination notice to the other person to end the tenancy in accordance with section 108 of *Residential Tenancies Act 2010*. The termination date can be before the end of the fixed term for fixed term agreements.

The legal personal representative of a deceased tenant who is given a Termination Notice by the landlord may give vacant possession of the residential premises at any time before the termination date specified in the Termination Notice. The estate of the deceased tenant is not liable to pay any rent for any period after the legal personal representative gives vacant possession of the residential premises and hands back the keys before the termination date.

HOME in PLACE recognises that there may be cultural or religious reasons why the person responsible for the deceased tenant's estate needs to keep possession of the property for a period following the tenant's death. HOME in PLACE will consider such requests on a case by case basis. Rent must be paid until the property is returned to HOME in PLACE.

Where there are other members of the household, they may be eligible for Succession of Tenancy.

## *Mortgagee repossession*

A tenancy may end in circumstances where a landlord defaults on their loan and the lending institution (mortgagee) becomes entitled to possession of the premises. A notice to vacate is given by the Sheriff and must give the former tenant not less than 30 days to vacate the premises.

## *End of a tenancy due to sale of property*

A landlord may give a termination notice on the ground that the landlord has entered into a contract for the sale of the residential premises. The termination notice must specify a termination date not earlier than 30 days after the day the notice was given. A notice cannot be given before the end of a fixed term agreement.

## *Transitional housing tenancies*

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. HOME in PLACE and the support provider make it clear at the start of the tenancy that the tenancy is for a fixed term and that a notice of termination will be issued to coincide with the last day of the tenancy. HOME in PLACE ensures that tenants are provided with written confirmation of the transitional housing requirements. Both the support provider and HOME in PLACE will assist the tenant in finding long term accommodation.

## *Relinquishing a tenancy*

A tenant may relinquish their tenancy when they are unable to continue living in the property. This may occur when a tenant goes into a rehabilitation program, prison or refuge accommodation.

In these situations, a tenant will receive confirmation that their tenancy has ended and, where appropriate, will be given information on the circumstances in which they can apply for tenancy reinstatement.

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## Service of Notices

HOME in PLACE will service notices in accordance with the requirements of the *Residential Tenancies Act 2010*.

A notice to a person must be in writing and may be served by:

- Posting the notice to the person's residential address or business address or, if an address is not specified, the person's last known residential or business address, allowing seven (7) working days for postal delivery;
- Hand delivering the notice to the person or a person believed to be 16 years of age or older at the person's residential or business address;
- Delivery the notice in an envelope addressed to the person and leaving it in the person's mailbox at their residential or business address; and
- A notice may also be served by email if a tenant has given consent to receive notices by this means.

If the tenant has not vacated by the date specified on the notice, HOME in PLACE will make application to the NSW Civil & Administrative Tribunal (NCAT) for orders terminating the agreement and possession of the property.

## Legal Minimum Notice Periods

- Fourteen days' notice if the tenant or landlord has breached the agreement (if the breach relates to rent areas, the rent must be at least 14 days in arrears at the time the notice is issued);
- Thirty days' notice to end the agreement on or after the end of a fixed term. The termination notice must be given before the end of the agreement;
- Thirty days' notice in a continuing tenancy if the premises are being sold with vacant possession;
- The NCAT may terminate a tenancy without a notice of termination being issued if the tenant, other household members or visitors threatens, abuses, intimidates or harasses the landlord, landlord's agent or employee/contractor of the landlord; and
- If a tenant is given notice of termination from the landlord, the tenant may leave the residential premises at any time before the termination date and not be liable to pay rent unless the termination notice is for the end of a fixed term and the tenant leaves before the end of the fixed term.

## HOME in PLACE responsibilities

When a tenancy ends the tenant can expect HOME in PLACE to:

- Conduct a property inspection and identify any repairs and maintenance, which are identified as the responsibility of the outgoing tenant;
- Give the tenant, where practicable, the opportunity to do any cleaning, minor repairs, garden maintenance;
- Carry out any repairs or maintenance on the property that are essential for re-letting the property or that are best carried out on a vacant property;
- Finalise tenant's end of tenancy account, repay any credits, rental bond or take steps to collect outstanding debt;

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- Negotiate with the tenant for settlement of identified rent arrears or maintenance/repair charges;
- Take action through the NCAT for any outstanding rent arrears, debts or end of tenancy charges as required;
- Record a forwarding address on the ex-tenant file (if known) and details of any unpaid debts and/or payment plans;
- Dispose of any belongings left in the premises in accordance with the Residential Tenancies Act 2010; and
- HOME in PLACE will seek feedback from tenants at the end of their tenancy. The information obtained will be used to assist with HOME in PLACE commitment to continuous improvement.

## Tenant Responsibilities

### *Rent arrears and end of tenancy charges*

A tenant is required to pay rent until the date the property is handed back. If a tenant vacates a property with outstanding rent arrears and/or other tenancy charges, HOME in PLACE will contact the tenant to discuss payment options and/or apply to the NCAT for orders to pay.

### *End of tenancy cleaning and repairs*

A tenant is responsible for returning the property to the landlord in the condition that it was in at the start of the tenancy, taking into account fair wear and tear. HOME in PLACE will, where possible, conduct a pre vacate inspection to identify any cleaning, damage or unauthorised works issues, the tenant will be asked to rectify prior to vacating.

Following the final inspection, a tenant may be given the opportunity to return to the property to complete any identified cleaning or repairs. If a tenant declines to remedy the outstanding issues, HOME in PLACE will engage a contractor to carry out the work and the costs will be charged to the tenant.

### *Goods left on the premises*

A tenant is responsible for removing all goods and belongings from the property at the end of the tenancy. HOME in PLACE will manage goods/belongings left behind at the end of a tenancy in accordance with the Uncollected Goods Act 1995.

HOME in PLACE will dispose of any rubbish and perishable items that are left at the property. For other goods of value and personal documents HOME in PLACE will give notices as required. If the goods are not collected within the timeframe given in the notice, HOME in PLACE will meet our legal obligations when managing uncollected goods. More information on uncollected goods can found on the Fair Trading website.

## Review of Decisions

If a tenant disputes HOME in PLACE decision to end a tenancy they should first discuss their concerns with a Tenancy Relations Officer. When a tenant does not vacate the property in accordance with a Notice of Termination, HOME in PLACE may take action in the NSW Civil & Administrative Tribunal, if HOME in PLACE takes this action, tenants are notified and provided with the opportunity to formally dispute the decision to end the tenancy.

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## 4. Definitions and Acronyms Glossary

For clarification of any definitions or acronyms contained within this document, please click on the [Glossary](#) for information.

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