

Ending tenancy early

As a tenant you have rights under the *Residential Tenancies Act 2010* and Regulation. This factsheet explains the law in NSW about ending a tenancy agreement during the fixed term.

Leaving during a fixed-term agreement

You can end your tenancy agreement during the fixed term for certain legally specified reasons (given below).

If you want to otherwise end your agreement early, consider:

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

See 'Transfer of tenancy' and 'Breaking the agreement' at the end of this factsheet.

Legally specified reasons

You can end your tenancy ('terminate'):

- because the landlord/agent has 'breached' the tenancy agreement – they have failed to meet their obligations under the agreement
- because the premises have become unusable
- because the landlord/agent has increased the rent during a fixed-term tenancy agreement of 2 years or more
- on a prescribed 'extraordinary' ground (such as because of domestic violence)
- because you would suffer undue hardship if the tenancy continued.

To end your tenancy this way, you must:

- give the landlord/agent a written *termination notice* and vacate – move out and return the keys – according to your notice, and/or
- apply to the Consumer, Trader and Tenancy Tribunal for a *termination order*. If the tribunal makes the order, it will end your tenancy and specify the day by which you must vacate.

Breach of agreement

Talk to your local Tenants Advice and Advocacy Service about which of the following actions to take.

Alternative to terminating

Apply to the tribunal for an order that the landlord/agent fix the breach (e.g. they do repairs you have requested) or that they stop breaching the agreement (e.g. they stop interfering with your privacy).

Giving a termination notice

Give a minimum 14-day termination notice that says it is for breach of agreement.

The landlord/agent may apply to the tribunal to dispute your notice. If the tribunal finds that the landlord/agent has fixed the breach, it may cancel your notice and your tenancy will continue.

Applying for a termination order

You must apply within 3 months after you become aware of the breach. The tribunal may make the order if it finds that:

- a) the landlord/agent breached the agreement, and
- b) the breach is sufficient to justify termination.

When deciding (b), the tribunal will consider: the nature of the breach, any previous breaches, whatever the landlord/agent did to fix the breach, whatever you did about the breach and the history of the tenancy.

If the tribunal does not make the order, your tenancy will continue.

Premises unusable

Give an immediate termination notice and vacate if the premises:

- are destroyed or become wholly or partly unlivable (other than due to breach of agreement), or
- can no longer be lawfully used as a residence, or

You must properly send or deliver the notice to the landlord/agent: in person, by post, by fax, or by hand in an addressed envelope to a mailbox at their home or business address. Keep a copy of the notice and record how and when you sent or delivered it.

If you post the notice, allow 4 days extra for delivery.

You can withdraw the termination notice at any time with the landlord's (and any co-tenants') consent.

The termination notice

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

- the address of the premises
- the day by which you will vacate (check how much notice you must give)
- the reason.

TENANTS RIGHTS FACTSHEET 16: Ending tenancy early

- are acquired or appropriated by a government authority by compulsory process.

Rent increase in a 2-year or more fixed term

Give a minimum 21-day termination notice and vacate. The notice must say that it is because the landlord/agent has increased the rent during the fixed term.

Extraordinary grounds

Give a minimum 14-day termination notice on any of the following grounds:

- You have been offered and accepted a place in social housing.
- You need or have accepted a place in an aged-care facility.
- The landlord wants to sell the premises and they 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.

Vacate according to your notice. You will not have to pay the landlord compensation for terminating early.

Hardship

Apply to the tribunal to terminate your fixed-term agreement if there are special circumstances and continuing the tenancy would cause you undue hardship.

The tribunal will consider evidence of your circumstances (e.g. finances or health) and those of the landlord. If it makes the order, it may also order that you compensate the landlord.

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 without good reason.

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 as much notice as possible. Try to get their consent in writing.

If the landlord does not consent, you can still end your tenancy by moving out and returning the keys.

Stop paying rent on the day you vacate.

Compensation to the landlord

Check your tenancy agreement under 'Additional terms'. If a break fee is specified (see below), this is the amount you must pay the landlord. However, you can still try to negotiate a lower amount.

A break fee is specified

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 another amount.

No break fee is specified

Negotiate an agreed amount of compensation with the landlord/agent. (The landlord may agree not to be compensated.) Discuss whether the landlord will claim from your bond. Put any agreement in writing.

If you cannot come to an agreement, the landlord/agent may apply to the Consumer, Trader and Tenancy Tribunal for an order that you pay a certain amount in compensation. The landlord must:

- provide the tribunal with details of their losses (e.g. lost rent, advertising costs, an agent's re-letting fee)
- outline the steps they took to minimise their losses (e.g. advertising for a new tenant without delay).

In the meantime:

- Keep negotiating. You may come to an agreement before the tribunal hearing.
- Claim your bond back. See Factsheet 03: *Bond*.

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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 4782 4155
- Central Coast 4353 5515
- Hunter 4696 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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