

Ending tenancies

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1. Intention to vacate

Notice period

NCCH requires tenants to give written notice prior to vacating their property in accordance with the Act. A minimum notice period of 21 days notice is given by supplying a letter addressed to any NCCH office.

The use of the standard notification of intention to vacate form is preferred, however completion by the tenant is not mandatory. Verbal notice of intention to vacate can be accepted, where it is appropriate to do so given the tenant's circumstances.

If a tenant gives notice but later decides not to move out, they are not obliged to do so, however the tenant should notify NCCH immediately.

Waiving the notice period

It is understood that tenants will not always be able to provide the required notice period. The notice period can be waived where:

- The tenant is relocating to another NCCH property; or
- The tenant is relocating to another social housing property; or
- The tenant is moving to a nursing home or crisis accommodation; or
- The tenant is deceased

Headlease properties

Where a tenant of a headlease property has given notice of their intention to vacate, consideration must immediately be given to NCCH relinquishing the property (i.e. returning the property to the owner). If so, a written notice of NCCH's intention to vacate will need to be given to the property landlord as required under the Act.

Pre-vacation inspection

A pre-vacation inspection is organised within 2 days of the tenant providing their notice of intention to vacate and is conducted at least 7 days prior to the intended vacation date.

The purpose of the pre-vacation inspection is to conduct a review of the state of the property, identify likely TRM and provide clear information to the tenant about NCCH expectations concerning the state of the property upon vacation.

Once the inspection is completed, the results of the inspection will be confirmed in writing

2. Key Return

Generally, the key return date will be the termination date for the tenancy, however the following exceptions apply:

- The tenant has not given the required 21 days notice;
- Goods have been left at the property (see "Abandoned Goods"); or
- Other occupants, including illegal occupants or squatters remain at the property (see "Additional Occupants").

Where goods have been left behind or other occupants remain at the property, the tenancy is not to be terminated at this stage. However, the return of keys is still recorded..

If keys are returned after hours the tenancy termination date is backdated to the previous day. For example, if the keys are left under the door on the weekend the account is terminated from the Sunday.

An End of Tenancy Checklist is opened for the tenant and completed.

See "Vacated Accounts" for further instructions and procedures in relation to management of the vacated account, including procedures for handling end-of-tenancy debts or refunds.

3. Tenant Exits to Supported Living

This section applies to circumstances where NCCH has received advice that a tenant has permanently exited to a supported living environment (including aged care, a hospital or rehabilitation centre) and the tenancy has not been terminated by the tenant by the return of the property keys.

NCCH recognises that these situations can occur where it is not always feasible for the tenant to have provided the required notice period. We also acknowledge that in these situations, it is necessary to act with great compassion, sensitivity and flexibility.

It does not include situations where:

- The tenant and/or advocate or representative has provided prior notice of their intention to vacate the premises to move to supported living, as this is covered under the general NCCH rules for vacation of premises; or

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- The tenant and/or advocate or representative has applied for a temporary absence from the property only or has requested consideration of the tenant being rehoused, including at an alternative dwelling, at the completion of their supported living stay
- There are remaining household members at the tenancy who may be eligible for or who may seek a transfer of tenancy

Once NCCH is notified of the tenants' move to supported living:

- Advice is sought from the tenant about the intended date of return of the property keys to NCCH. The tenant should be provided with at least 14 days to do so, however NCCH will generally provide a maximum grace period of 21 days prior to commencing any action to gain possession of the of the property.
- The tenant's rent is reduced to \$1 per week, effective from the date of the move to supported living. This nominal "occupation fee" is charged for a maximum of 21 days only. Once the 21 day period has expired, market rent is charged for the accommodation
- Any automatic rent deductions are cancelled
- The tenant (or the tenant's representative) is sent a letter that confirms NCCH policies and procedures in relation to the matter and include a copy of the Vacating Your Home factsheet.

Keys not returned

If the keys have not been returned within 21 days of the tenants move to supported living, the property can be considered by NCCH as abandoned.

4. Issuing Termination Notices

As a general rule, NCCH operates to the following authorities in relation to the termination of tenancies:

- Issuing of termination notices: Area Managers
- Application for a termination order from the NCAT: Housing & Communities Chief Executive Officer
- Approval to serve a Warrant of Possession (i.e. eviction): Chief Executive Officer

However, specifically, the tenancy termination authorities are defined according to the section of the Residential Tenancies Act, being used to terminate the tenancy. NCCH staff should always ensure that the period of notice being given meets the requirements of the relevant Act's provisions.

In relation to termination notice expiry dates, an additional allowance of at least four (4) days must also be added to the period of the notice.

For those sections of the Act that require a termination notice to be issued, an application cannot be made to the NCAT until after the termination notice has expired.

NCCH can issue the following termination notices:

RTA sctn	Description	Termination notices (Expiry)
84	End of fixed term agreement	On or after the end of the fixed term and not earlier than 30 days after the day on which the notice is given
85	No cause	Not earlier than 90 days after the day on which the notice is given.
86	Sale of premises	Not earlier than 30 days after the day on which the notice is given.
87	Tenant breach	Not earlier than 14 days after the day on which the notice is given
88-89	Non-payment (rent or non-rent)	Not earlier than 14 days after the day on which the notice is given.
90	Serious damage or injury	N/A
91	Use of premises for illegal purposes	N/A
92	Abuse, threats or intimidation of staff	N/A
95	Other occupants in residence	Not less than 14 days before the notice is given
106	Abandoned premises	N/A
108	Deceased tenant	Not earlier than 7 days after the day on which the notice is given.
143	Not eligible for social housing	Not earlier than 60 days after the day on which the notice is given

Exact copies of all Notices to Terminate and NCAT applications will be retained on the tenants file.

Tenant's right to appeal

Tenants have the right to appeal any decisions made concerning the termination of their tenancy.

5. Fixed term Agreements and No-Cause Evictions

By tenant during fixed-term

NCCH allows a tenant to provide written notice of their intention to vacate, even where the current tenancy is subject to a fixed term agreement.

Tenants subject to a fixed term tenancy are still required to provide the notice specified under these procedures.

No cause evictions by NCCH

No grounds terminations (under sections 84 and 85 of the Act) have the potential to be used in a way which could deny natural justice to a social housing tenant. The principal danger is that where a tenant is served a notice of termination under these sections, there is little opportunity for tenants to correct or rebut and tenants are largely left without any right or means of appeal or review.

For this reason it is incumbent on community housing providers to ensure they have policies in place that protect the rights of tenants to natural justice. They are assisted in this process by the *Community Housing Access Policy* (the CHAP) which states that community housing providers should not 'routinely' terminate agreements under section 85 of the Act.

Using Section 85

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It is not the policy of NCCH to issue a Notice to Terminate a periodic lease "without cause" (a 90 day notice issued under section 85 of the Act).

Action taken under this section by NCCH must be approved by resolution of the NCCH Board of Directors and only then as a last resort action, taken due to extraordinary circumstances.

Termination by headlease landlords

Where a notice under this section has been received from a headlease landlord, send the tenant

A copy of the landlord's termination notice

The standard letter TERM09

Discussions with the tenant concerning alternative accommodation should then commence immediately

As the landlord's residential tenancy agreement is superior, NCCH and our tenant are still bound by the termination date nominated even where the replicated Notice to Terminate issued by NCCH may be deficient

See *Rehousing of Headlease Tenants* for more information on NCCH rules in relation to this matter.

Using Section 84 (End of Fixed-Term Agreements)

NCCH will only terminate a residential tenancy agreement under Section 84 of the Act, in specified allowable circumstances. Any Notice to Terminate issued under this section, and any subsequent NCAT actions in relation to ending the tenancy, must be approved by the Housing & Communities General Manager (HCGM)

Appendix 3 fully details the circumstances in which Section 84 can be used to terminate fixed-term agreements.

6. Occupants remaining in residence

Co-tenants vacating

The Act generally allows a co-tenant from a joint tenancy to terminate and offer vacant possession of their property on behalf of other co-tenants (see ss 74 – 79 of the Act).

If one tenant from a joint tenancy wishes to terminate the tenancy, it is important that NCCH staff establish the intentions of any remaining co-tenants. If the entire household do not wish to vacate the property, NCCH staff should contact any remaining tenants or residents and assess their eligibility for tenancy succession according to relevant NCCH rules and procedures.

General matters

When a tenant vacates and an occupant who is not a signatory to the tenancy agreement remains in the rental property, NCCH will determine whether the occupant is:

- a resident who may be eligible to have the tenancy transferred into their name (under NCCH tenancy succession procedures),
- an illegal occupant, or
- a squatter
- Illegal occupants

An illegal occupant does not have the approval of NCCH to reside at the property, but may have the permission of the tenant to do so.

Where a tenant has vacated and illegal occupants remain in the tenancy:

- The illegal occupant/s are sent a Termination Notice and covering letter, including all documents noted in the covering letter.

Covering letter is imperative as it invites the occupants to apply for succession and provides information on other social housing products available.

NCCH also needs to consider that the occupants have the right to appeal any tenancy succession decision made (firstly using the first-level appeal system of NCCH and then of Housing Appeals Committee).

In the absence of any succession application (and the occupants not having returned the keys by the due date), the application for possession of the property is pursued through the NCAT in the usual manner.

Squatters

Squatters do not have the permission of the landlord nor tenant (nor the former tenant) to be at the property. Squatters are regarded as trespassers (Inclosed Land Protection Act 1901 NSW) and Police assistance must be sought for their removal. NCCH will contact the local Police command and an arrangement made for the removal of the squatters.

Options, where Police assistance is either not available, is not considered appropriate or where the Police have refused to intervene, include:

- Advising the occupant of social housing products that may be eligible for them, in their own right (and assisting in their access to these products wherever possible);
- Issuing the tenant with warning letters, including a Termination Notice (based on their breach of the agreement) as a demonstration of the serious risk to the tenancy caused by the other occupant's residency
- Working with any relevant local support services, e.g. mental health services, on a strategy to have the occupant removed

7. Rehousing of headlease tenants

See NCCH management transfer policies for information concerning the rehousing of tenants of headlease properties, where properties are being relinquished by NCCH.

It is the policy of NCCH to always rehouse tenants of all headlease properties being relinquished, except in cases where:

- The tenant is in serious breach of their agreement and that breach has been validated by an order of the NCAT for the tenant to vacate the premises; or
- The tenant is no longer eligible for social housing because they own a property which could be used to satisfy their housing need; or
- The tenant/s proven behaviour are the cause for the need to relinquish the property.

Tenants who do not meet the general social housing eligibility criteria are eligible to be rehoused (unless they are excluded on home ownership grounds as outlined above)

8. NCAT applications

NCCH will apply for order for possession of a tenancy from the NSW Civil and Administrative Tribunal only if all other avenues to amend an agreement breached by the tenants have been exhausted and the breach remains unrectified.

It is the preference of NCCH to apply to the NCAT for a Specific Performance Order (SPO) rather than an order for possession. Any approval to seek an order for possession can only be made within the approved NCCH delegated authorities..

At all times throughout this process NCCH will encourage dialogue and resolution with the tenant to amend the breach of agreement.

A copy of all NCAT applications are placed on the tenant file.

Urgent hearings

The NCAT can arrange for an urgent hearing of an application. An 'urgent issue' is where there is a real or perceived threat of damage or injury to person or property, health and safety issues, or where the parties involved will suffer severe personal or financial hardship.

Examples of urgent situations include:

- A lockout from a rented premises
- A threat of damage or injury to person or property
- Health and safety issues
- Severe personal or financial hardship.

If granted, an urgent hearing of the application should be listed within 1 to 7 days.

9. NCAT hearings and orders

All NCAT orders that place an obligation on NCCH to take certain actions must be acted upon by NCCH staff upon at all times.

A copy of any NCAT orders obtained must be provided to the Area Manager immediately and then retained on the tenant file.

10. Requesting a Warrant of Possession

A warrant for possession is an official document issued by the NCAT authorising a Sheriff's Officer to take all reasonable steps to remove the tenant from the residential premises, following the tenant's refusal to comply with a NCAT order to vacate the premises.

The Act provides NCCH with 30 days to request a warrant from the date of possession.

In matters where a warrant request needs to be made, the action will need to be approved by the NCCH Chief Executive Officer.

In order for the Chief Executive Officer to approve a warrant request, he/she will need to be satisfied that

- The tenant has been treated fairly and had been afforded natural justice and due process
- All reasonable measures have been taken to sustain the tenancy including early and appropriate interventions by NCCH, support service referrals and the development of an at-risk tenancy management plan (where appropriate).

11. Requesting Police information

Police Record of Understanding (ROU)

Community housing providers have a Record of Understanding (ROU) with the NSW Police Force. This ROU allows NCCH to request information about Police attendance/intervention at a NCCH tenancy.

This information can only be requested where NCCH have commenced legal action through the NCAT against the tenancy. The information is only to be used for the preparation of evidence for a NCAT hearing only.

A copy of the ROU, the Deed of Confidentiality (to be signed by all NCCH staff with access to information supplied by the Police under the ROU) and the Request Form are located on the Housing Pathways website.

Police Subpoenas from the NCAT

Whilst police information will be primarily gained through use of the ROU, NCCH can apply for a subpoena for Police records through the NCAT. The application form and current information, including costs, is available from the NCAT website.

The Request to Issue a Summons application needs to be made to The NCAT registrar quoting the NCAT reference number. If approved, the Registrar sends the summons to NCCHC to be served on the Police.

Once the summons is received, the Police duty-Sergeant should be contacted directly to advise that NCCHC are in possession of the summons and to make mutual arrangements for the summons to be served on the Police.

Document information	
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National Regulatory Code Evidence Guideline	Performance Outcome 1: Tenant and Housing Services
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Appendix 1: Ending Fixed-Term Agreements

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Situation	Allowable use (only when ALL listed conditions are met):
End of transitional housing agreements	<ul style="list-style-type: none"> Where a model of fixed-term transitional housing is used to provide assistance to the tenant, as part of NCCH's transitional housing programs; and the tenant has, prior to the establishment of the tenancy, been made aware in writing that the tenancy is for a fixed-term, transitional period only
Support is withdrawn during a (formal) supported housing tenancy	<ul style="list-style-type: none"> the tenant has, prior to the establishment of the tenancy, been advised in writing that they were required to engage with a support service for the duration of the tenancy; and NCCH has a formal partnership agreement with the third-party support provider, granting "tenant nomination" rights to the property; and The tenant's application for social housing assistance was escalated beyond normal priority housing protocols when the tenant was first nominated to the property; and The support provider or the tenant has disengaged from their relationship irrevocably; and An acceptable alternative arrangement for the provision of support services to the tenant cannot be arranged or is not considered feasible and NCCH consider that the tenant does not have the capacity to sustain a tenancy without the required supports.
Provisional tenancies (Succession of Tenancy)	<ul style="list-style-type: none"> The resident has been granted a provisional fixed-term residential tenancy agreement (under the NCCH Succession of Tenancy procedures), but succession was not ultimately approved by NCCH; and The tenant has been given reasonable opportunity to appeal the NCCH decision to deny succession and to have the matter heard by the NSW Housing Appeals Committee. <p><i>See NCCH Succession of Tenancy procedures</i></p>
Provisional tenancies (social housing eligibility)	<ul style="list-style-type: none"> The resident has been granted a provisional fixed-term residential tenancy agreement (under Housing Pathways procedures), because they owned property which was in the process of being settled; and The tenant was provided with appropriate information, at the time of tenancy establishment, that any continuation of their agreement with NCCH past the initial fixed-term period, would be conditional upon establishing their continued eligibility for social housing;
Ineligible for affordable housing	<ul style="list-style-type: none"> The tenant no longer meets the eligibility conditions of an affordable housing program (AHP NSW or NRAS), and the Program guidelines require that the tenant must vacate their tenancy <p><i>See AHP Eligibility Review procedures and NRAS eligibility review procedures</i></p>
Breach of Neighbour Harmony Local Allocation Strategy	<ul style="list-style-type: none"> The tenant has not met the conditions imposed by the NCCH Neighbour Harmony LAS, during their fixed-term tenure; and Those conditions relevant to the Neighbour Harmony LAS had been explicitly outlined in writing, prior to the establishment of the tenancy The tenant has refused one valid offer of alternative social housing
Unsatisfactory former tenants of NCCH	<ul style="list-style-type: none"> The tenant has been granted a fixed-term residential tenancy agreement (under the NCCH Housing Offers procedures), but has not met the requirements of their tenancy with NCCH by: <ul style="list-style-type: none"> Not meeting the terms of their agreed repayment plan in relation to a debt from a former NCCH tenancy; or A serious nuisance and annoyance breach has been substantiated, where the tenant has been classified as an unsatisfactory former tenant of NCCH. The tenant has been given reasonable opportunity to appeal the NCCH decision to deny succession and to have the matter heard by the NSW Housing Appeals Committee. <i>See NCCH Offers procedures for more information concerning the classifications of former tenants of NCCH</i>

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Appendix 1 (Continued)

Situation	Allowable use (only when ALL listed conditions are met):
Signing a new agreement following tenancy termination by the NCAT	<ul style="list-style-type: none">• The tenant was signed to a new fixed-term agreement at the same property following an Order for Termination being granted by the NCAT upon application by NCCH; and• At the time the new agreement was signed, the relevant breaches upheld by the Tribunal had not been resolved at the tenancy (e.g. debts remain unpaid); and• the tenant has, prior to the establishment of the new agreement, been made aware in writing that the tenancy is for a fixed-term period only; and• the tenant has, prior to the establishment of the new agreement, been made aware in writing of all conditions that would need to be met in order for NCCH to offer a further agreement with NCCH; and• any additional conditions imposed by NCCH for a new agreement (as above) are fair and reasonable and considered achievable by the tenant; and• the tenant has not meet the conditions as outlined in writing, prior to the end of the fixed term agreement

NCCH acknowledges the Bundjalung, Arakwal, Gumbaynggir and Yaegl peoples who are the traditional custodians of the land that comprises the Northern Rivers.

