

Ending a Tenancy

Purpose

This policy explains how a tenant of Cawarra Residential can end a tenancy.

Scope

This policy applies to tenants who live in a social housing property that is managed by Cawarra Residential (we, our, us).

Policy overview

This policy outlines reasons and notice periods for ending tenancies, as well as rights and obligations under the NSW Residential Tenancies Act (2010) when a tenancy ends.

As a social housing provider we are committed to support tenants to sustain their tenancy. Our Tenant Wellbeing Policy outlines how we will identify and respond to the needs to support our tenants and /or their household members to meet their tenancy obligations

Noting this, there are several reasons tenancies may end. Some of these are voluntary, for example where the tenant decides to leave their tenancy and move into the private rental market, or to relocate interstate.

On other occasions it may be necessary for us to initiate termination of a tenancy for portfolio or tenancy management reasons. This may be because the tenant is living in a leasehold property that is being taken back by the landlord, or a property that we own is planned for renovation, disposal or redevelopment. In these situations, we will issue notice in accordance with the *Residential Tenancies Act 2010* and seek to relocate the tenant to another social housing property. More information on this process is outlined in our Transfer Policy.

We may also seek to terminate a tenancy in instances where the tenant has breached their Residential Tenancy Agreement. In these instances, tenants will be advised in writing and given support and assistance to rectify the problem and to sustain their tenancy.

When we issue a notice of termination, we will comply with the *NSW Residential Tenancies Act 2010*, explaining the reason for the termination and a reasonable timeframe for the tenant to vacate the premises. While NSW Civil and Administrative Tribunal (NCAT) action and eviction may be the result in some circumstances, in the majority of cases all steps will be taken to assist a tenant to keep their tenancy.

Policy

Reasons for ending a tenancy

A tenancy is either ended voluntarily by the tenant providing written notice or initiated by us and terminated through the NCAT. There are several reasons why tenancies may end. The most common reasons are explained below.

When a tenant wants to leave – ending a tenancy on a voluntary basis

Ending a Tenancy

Tenants must provide written notice when they decide to leave their tenancy and can provide notice by completing our Request to End Tenancy Form. Under the Residential Tenancies Act, tenants are required to give at least 14 days' notice if on a fixed term tenancy, or at least 21 days if they are on a period agreement. We will respond in writing to the tenant to confirm that their notice to terminate the tenancy has been received.

A tenant may withdraw a notice to vacate at any time with our consent. The tenant may give a further notice on the same or other grounds at a future date.

Circumstances of domestic violence

A notice period is not required where the tenant or their dependent child is in circumstances of domestic violence. In such cases, a tenant can end their tenancy immediately without notice. A tenant or their dependent child is in circumstances of domestic violence if they:

- Were the victim of 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 to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the current tenancy

Cawarra Residential may require tenants to provide evidence of domestic violence in the form of a certificate of conviction for the domestic violence offence, family law injunction, provisional, interim or final DVO, family law injunction, or a declaration made by a medical practitioner in the prescribed form.

When a landlord terminates a leasehold tenancy - end of fixed agreement or "no grounds"

If the tenant lives in a leasehold property and the landlord issues us 30-day (end of fixed term) or 90-day ("no grounds") Notice of Termination (N.O.T.), we will issue a corresponding N.O.T. to the tenant. In these circumstances, tenants will maintain their right to a social housing tenancy with us and we will make an offer of alternative social housing in line with our Transfer Policy.

As in such instances, as the property must be handed back to the owner within a defined period, tenants will only be made one valid offer of housing. If this offer is refused, tenants will need to resolve their own housing need.

When a tenant rejects a reasonable offer of alternative social housing - Section 148 termination notice

If a tenant rejects a reasonable offer of alternative social housing, we will make a final check to confirm that the offer made to the tenant considered all of their known housing needs and was consistent with the Allocation Policy.

An offer is considered reasonable if it will meet the client's known housing and locational needs, and allows continued access to services, based on the merits of the information provided by the tenant during the relocation process. We do not consider factors such as, not

Ending a Tenancy

liking a particular suburb, the neighbourhood, the look of the property, or reasons based on personal preference to be valid reasons for rejecting an offer.

We have the legal right to terminate a tenancy on the grounds that we have made a reasonable offer of alternative social housing. This legal right is set out in Section 148 of the NSW Residential Tenancies Act 2010.

The processes that we are legally required to follow when relying on Section 148 to terminate a tenancy, including the review processes, are set out in Section 149 and Section 150 of the *NSW Residential Tenancies Act 2010*.

If we intend to seek termination of a tenancy under Section 148, we will provide the tenant with a notice of intention to issue a Notice of Termination under Section 148 and provide them with the opportunity to apply for a review of this decision within fourteen days.

If a review is requested we will ensure that:

- A Team Leader or higher employee will undertake a first level review within seven days,
- A second level review is undertaken by the Housing Appeals Committee (HAC) within seven days following the first-tier review, and
- The recommendation by the HAC is reviewed by the Regional Manager and Executive Director, Customers and Communities for a final decision.

Ending transitional (temporary) housing tenancies

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. At sign-up the tenant is advised that the tenancy is for a fixed term and that a N.O.T. will be issued to coincide with the last day of the tenancy. Tenants are always provided with written confirmation of the transitional housing requirements. We, along with the support provider will assist the tenant in finding long term accommodation when the tenancy ends.

The Housing Pathways application for these tenants remains live on the NSW Housing Register in recognition of the temporary nature of these tenancies.

Relinquishing a tenancy

A tenant may relinquish or be asked to relinquish their tenancy when they are unable to continue living in their property. This will be when the tenant has gone into long term care, rehabilitation or other institutional care or prison for more than three months in line with our Absence from Property Policy and Succession of Tenancy Policy.

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

Transfer, relocation and mutual exchange

When a tenant is approved for a management transfer or mutual exchange, their existing tenancy will be terminated.

Ending a Tenancy

The tenant will then sign a Residential Tenancy Agreement before moving into the other property.

Eviction proceedings for a breach of the Residential Tenancy Agreement

Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity and all possible support and assistance to rectify the problem.

Where there is a serious breach and the tenant does not rectify the problem, it may be necessary to issue a 14 day N.O.T under Section 87 of the NSW Residential Tenancies Act for termination of the agreement and possession of the premises. This action will involve an application for a hearing at the NCAT following due legal process as laid down by the NSW *Residential Tenancies Act 2010*.

Abandonment

Where a tenant has abandoned the property, we can apply to the NCAT for an order declaring that the premises are abandoned and to change the locks. Where there is no doubt that the property has been abandoned, we can change the locks and take possession.

Death of a sole tenant

Where a sole tenant has died, we will liaise with the tenant's next of kin and /or legal representative to manage removal of contents of the house and to end the tenancy. Confirmation that the tenancy has ended will be provided to next of kin or the legal personal representative.

In circumstances where the tenant has no family or next of kin, the tenancy can be ended immediately. Confirmation that the tenancy has ended will be sent to the estate of the tenant.

Additional household members are not automatically entitled to succession of tenancy if the tenant leaves the property. More information on eligibility criteria can be found in our Succession of Tenancy Policy.

Property is uninhabitable or destroyed

When a property becomes uninhabitable due to flood, fire or other causes, termination of the tenancy takes immediate effect.

No cause termination, Section 85 of Residential Tenancy Act (terminated by Cawarra)

Under section 85 of the Residential Tenancies Act 2010 a landlord may issue a notice of termination for a periodic agreement provided that not less than 90 days' notice is given. Cawarra Residential will only issue a notice of termination under section 85 of the Residential Tenancies Act 2010 in exceptional circumstances approved by the CEO.

The CEO must be convinced that all other options have been exhausted and that Cawarra Residential failure to act will result in us failing in our duties and responsibilities as a community housing provider. Cawarra Residential will make every attempt to secure alternative accommodation for the tenant during the 90 day notice period. Cawarra Residential may issue

Ending a Tenancy

a 90 day notice to a tenant if vacant possession of the property is required for redevelopment or disposal of the property, and the tenant has refused offers of a transfer to suitable alternative accommodation.

This policy would only be used in exceptional circumstances where negotiations to relocate the tenant had failed. If the tenant wishes to appeal against the Notice of Termination, this appeal must be made in writing within 21 days of the tenant receiving the notice. See Complaints and Appeals Policy.

Tenant obligations at the end of a tenancy

Tenants are responsible for ensuring that properties are returned to Cawarra Residential in a reasonable condition allowing for fair wear and tear. Tenants will be required to pay any costs necessary to make good damage to a property, for end of tenancy cleaning, for removal of any items left behind and for replacement of locks and keys that are not returned.

Costs will be recovered in line with our [Tenant Charges Policy](#).

Tenants are not responsible for any damage caused by a domestic violence perpetrator (whether or not the perpetrator is a tenant) during a domestic violence offence in line with our [Domestic & Family Violence Policy](#).

A co-tenant who is not the domestic violence perpetrator does not have to pay for this type of damage.

Eligibility for rental reference

A tenant will be eligible for a rental reference if:

- ☐ Rent was paid up to date and has been paid regularly for the previous six months
- ☐ No proven complaints have been received against the tenant
- ☐ Notice has been properly given
- ☐ Property has been left in an acceptable condition
- ☐ Keys have been returned to Cawarra Residential

Former tenants

At the end of tenancy, a check will be made on any outstanding rental or non-rent debts and any nuisance and annoyance or illegal activities. We will take action in the NCAT to recognise any substantial outstanding tenant debt, and these will be recorded against the tenant file in our client management system.

Under Housing Pathways, when an applicant has been identified as being previously housed in social housing, they will be referred to their previous social housing provider. Their tenancy history will then be reviewed to determine their eligibility for social housing and any conditions that the applicant may need to meet before approving their request for housing assistance.

Ending a Tenancy

We will need to be satisfied that a former tenant has the ability to sustain a tenancy, with or without support. We will also consider whether other people who lived with the former tenant can be part of any future household. This applies in cases where a household member in a previous tenancy was responsible for nuisance and annoyance, property damage or acts of violence.

The applicant will have to meet specific conditions before a provider can list their application on the NSW Housing Register or be considered for other housing assistance. Applicants may need to provide evidence of their ability to sustain a tenancy. All applicants who have debts must repay those debts. Cawarra Residential will still consider the applicant for assistance if they demonstrate their commitment to repay the debt by making regular repayments.

Complaints and Appeals

If a tenant is not satisfied with a service provided by Cawarra Residential or does not agree with a decision it has made, they can ask for a formal review. To do this, the tenant can complete either an **I want to complain form** or an **I want to appeal form**, details of which appear in the Cawarra Residential's Complaints and Appeals Policy. This policy, and a helpful information leaflet, is available from Cawarra Residential's office or they can be downloaded from our website

If a tenant is unhappy with the outcome of an appeal to Cawarra Residential, they can lodge a second level appeal with the Housing Appeals Committee. The Housing Appeals Committee is an independent agency that reviews certain decisions made by staff of Community Housing organisations and Housing NSW. For information on the Housing Appeals Committee call 1800 629 794 or go to www.hac.nsw.gov.au

Related Documents and Resources

Type	Title
Legislation	NSW Residential Tenancies Act 2010
Legislation	Residential Tenancies Regulation 2019
Policy	Tenant Wellbeing Policy
Policy	Transfer Policy
Policy	Absence from property
Policy	Allocation Policy
Policy	Succession of Tenancy Policy
Policy	Tenant Charges Policy
Policy	Domestic & Family Violence Policy
Policy	Complaints and Appeals Policy
Form	Additional Person Information Form

Ending a Tenancy

Form [Application for Rental Subsidy Form \(PDF\)](#)

Form [Request to End Tenancy Form](#)