

Domestic violence

This factsheet discusses tenancy issues for renters in NSW who want to leave a domestic violence situation.

Domestic violence and your tenancy

This factsheet discusses the situation where you are renting and you want to end your tenancy agreement (or other arrangement) with a perpetrator of domestic violence. You may want:

- to stay at the rented premises and have the perpetrator leave, or
- to leave and end your legal liability.

Staying will mean taking action to end the tenancy of the perpetrator by:

- getting a final *apprehended violence order* (AVO) against them that includes an exclusion order, or
- taking other action under tenancy law (which may involve taking action in the NSW Civil and Administrative Tribunal - NCAT).

Leaving will mean ending your tenancy – with or without ending the perpetrator’s tenancy.

Tenancy status

Your tenancy status will affect your options:

- **Co-tenant:** Your name and the names of other tenant/s are on the residential tenancy agreement for the premises. You share rights and obligations with the other co-tenant/s.
- **Head-tenant:** You are a tenant (your name is on the residential tenancy agreement for the premises), you live at the premises and sub-let part of the premises to another person. That person may be a sub-tenant or a boarder/lodger (see below). You are their landlord.
- **Sub-tenant:** You live with a tenant (their name is on the residential tenancy agreement for the premises) who has sub-let part of the premises to you under a separate written tenancy agreement. That person is a head-tenant and they are your landlord.
- **Boarder or lodger:** You live with your landlord and they keep control over the whole premises (including the part you rent). They may be the owner, or a tenant who has a residential tenancy agreement for the whole premises (a head-tenant).

Type of agreement

Your options will also be affected by the type of agreement you have – a *fixed-term* tenancy agreement (for a specified period), a *periodic* tenancy agreement

(the fixed term has expired or is not specified) or a boarding/lodging agreement.

Discuss your options

Contact a service such as the Domestic Violence Line or your local Community Legal Centre (or for women, the Domestic Violence Legal Service) to discuss staying or leaving and/or applying for an AVO.

About AVOs

An AVO is an order made by a court that prohibits a person (the *defendant*) from doing certain things so to ensure the safety and protection of another person. It is not a criminal charge but if the defendant breaks any conditions of the AVO, they can be arrested and charged.

An AVO with an *exclusion order* will exclude the defendant from the premises.

Note that if the defendant consents to the order, the court may make the AVO relatively quickly. However, if the defendant does not consent, it could take some months to get a final AVO.

Changing the locks

As a tenant, you can change the locks, without your landlord’s consent, if any occupant has an AVO with exclusion order (interim, provisional or final) against them. You can withhold copies of the new keys or opening devices from the excluded occupant.

You want to stay – you have a final AVO

When the defendant is a tenant, a *final* AVO with exclusion order will terminate their tenancy. If their tenancy is terminated this way and you are:

- head-tenant or co-tenant – Your tenancy will continue.
- sub-tenant or boarder/lodger – Your tenancy or other agreement will continue – except when the head-tenant’s tenancy is terminated, then your tenancy/agreement will also terminate. However:
 - You (and/or other remaining occupants) may apply to NCAT for an order recognising you as tenant/s under the original residential tenancy agreement. (In social housing you must meet eligibility criteria.)
 - If you are not recognised as tenant/s, the landlord of the premises may give you 14 days notice to vacate.

You want to stay – without a final AVO

- **Co-tenant:** Apply to NCAT for an order to terminate another co-tenant's (perpetrator's) tenancy. It will consider 'the special circumstances of the case' when deciding if to make the order.
- **Head-tenant:** Apply to NCAT for an order to terminate a sub-tenant's (perpetrator's) tenancy on the ground that they have seriously or persistently threatened/abused you, or caused you injury, or –
Give a sub-tenant a termination notice without ground to end their tenancy, or give a boarder/lodger notice to leave per your agreement.
- **Sub-tenant:** Where the perpetrator is another sub-tenant or boarder/lodger, the head-tenant is in breach of your agreement by permitting interference with your 'reasonable peace, comfort and privacy'. Apply to NCAT for an order that the head-tenant remedy this breach by removing the perpetrator.

You want to leave

End your tenancy by doing one of the following. (A head-tenant should consider their obligations to any sub-tenant/s, boarder/s or lodger/s.)

Note: If you give a termination notice (see Factsheet 09: *You want to leave*) you can leave at any time before the date in the notice but you may still have to pay rent until the end of the notice period.

Exclude the head-tenant by a final AVO

Sub-tenant or boarder/lodger: If a final AVO is made that excludes the head-tenant from the premises and terminates their tenancy, your tenancy or agreement will also terminate.

Give termination notice during fixed term

Co-tenant or head-tenant: (The perpetrator is excluded by a final AVO during your fixed-term tenancy agreement.) Give your landlord a 14-day termination notice. You will not have to compensate them for ending the tenancy early.

Give a termination notice without ground

- **Head-tenant or sub-tenant:** Give your landlord/head-tenant a termination notice of 14 days at the end of a fixed-term agreement or 21 days during a periodic agreement.

- **Co-tenant:** Give your landlord and other co-tenant/s a 21-day termination notice during a periodic agreement.
- **Boarder/lodger:** Give your landlord notice to leave according to your agreement.

Give a termination notice for breach

Sub-tenant: Give the head-tenant a 14-day termination notice for breach of your tenancy agreement. If the perpetrator is:

- head-tenant – Give notice on the ground that the head-tenant has caused interference with your 'reasonable peace, comfort and privacy'.
- another occupant – Give notice on the ground that the head-tenant has permitted interference with your 'reasonable peace, comfort and privacy'.

Transfer your tenancy

Co-tenant, head-tenant or sub-tenant: Ask for your landlord's/head-tenant's written consent to transfer your tenancy to someone else (see Factsheet 18: *Transfer and sub-letting*).

Apply to NCAT for a termination order

- **Co-tenant:** Apply to NCAT for an order terminating your tenancy. NCAT will consider 'the special circumstances of the case' when deciding whether to make the order.
- **Head-tenant or sub-tenant:** Apply to NCAT for an order terminating your tenancy because you would suffer undue hardship if the tenancy continued. (You may have to compensate your landlord however.)

Contacts and further information

- Factsheets 09: *You want to leave*, 10: *Landlord ends agreement*, 11: *NSW Civil and Administrative Tribunal*, 16: *Ending tenancy early*
- Domestic Violence Line: phone 1800 656 463
- Community Legal Centres: phone 02 9212 7333
- Domestic Violence Legal Service (for women): phone 8745 6999, free call 1800 810 784

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For free tenancy advice, call your local Tenants Advice and Advocacy Service:

SYDNEY:

- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 8198 8650
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

REGIONAL:

- Blue Mountains 4704 0201
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

ABORIGINAL:

- Sydney 9833 3314
- West NSW 6881 5700
- South NSW 1800 672 185
- North NSW 1800 248 913

WEBSITE: tenants.org.au

NSW FAIR TRADING: 13 32 20

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