

Domestic violence and tenancy

This factsheet discusses domestic violence and tenancy in NSW. Tenants have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2010*. Tenancy law can help victim-survivors of domestic violence in a number of ways. However, if you are a sub-tenant without a written agreement in a share-house, a lodger or a guest, then you are probably not covered by this Act. If you are in one of those groups, or if you are not sure, seek advice from a Tenants Advice and Advocacy Service (tenants.org.au/contact-us) or a Community Legal Centre (clcnsw.org.au). For more resources, including a sample DV termination letter, see tenants.org.au/resources/domestic-violence

What is domestic violence?

Domestic violence causes you concern for your safety or the safety of another, eg a dependent child. The perpetrator of domestic violence (DV) may live with you, but need not, e.g. a relative. For more information on the definition of DV see the Womens Legal Service NSW website (wlsnsw.org.au).

Tenancy law can help in situations of domestic violence

In circumstances of DV, NSW tenancy law can provide some help to victim-survivors and other innocent parties.

It depends on various things:

- whether your agreement is fixed-term (e.g. 6 months) or periodic (ongoing)
- your tenancy status, eg head-tenant, sub-tenant, co-tenant
- the tenancy status of the perpetrator
- whether you want to leave or stay
- whether you want the perpetrator to leave
- whether you have an Apprehended Violence Order (AVO)
- what sort of AVO you have, eg interim, provisional, final, exclusion
- whether you have other documentary evidence of DV

The help might be one or more of the following:

- ending the perpetrator's tenancy
- ending your tenancy
- transfer of your tenancy (rarely)
- protection of the victim-survivor from breach fees and costs for property damage in some circumstances
- a landlord or agent will not be allowed to list information about a tenant in a tenancy database when the tenant has terminated the agreement in circumstances of domestic violence

You might need to:

- apply to NSW Civil and Administrative Tribunal (NCAT)
- give a termination notice – to the landlord or agent and all other co-tenants (See Sample letter: Ending tenancy due to domestic violence)
- apply for an AVO

For more information, see below for examples below of how tenancy law works for victim-survivors in different situations.

Please get advice before taking any action. Discuss your options with a Tenants Advice and Advocacy Service, Community Legal Centre and/or the police.

Apprehended Violence Orders

Apprehended Violence Orders (AVOs) prohibit a person from doing certain things so as to ensure the safety and protection of another person. AVOs are court orders. They do not mean that a crime has been committed, but breaching an AVO is a crime. AVOs can be **personal** or **domestic** (APVO or ADVO). Most AVOs are applied for by police.

In tenancy law, it can matter:

- whether an AVO is final, interim or provisional
- whether it excludes the perpetrator from the rented premises by address
- whether it is an APVO or an ADVO

E.g. for you to give a DV termination notice any ADVO will do. But for the perpetrator's tenancy to be ended, it needs to be a final order (APVO or ADVO) and exclude the perpetrator from the rented premises, by address in the text of the order.

See further information and a **sample DV termination notice** at: tenants.org.au/sample/termination-domestic-violence

Changing the locks

Tenants cannot change the locks without prior consent of the landlord or reasonable excuse. A tenant or occupant being prohibited from entering by an AVO is a reasonable excuse. If you change the locks you should provide copies of the keys to the landlord within seven days unless the AVO is against the landlord.

The bond

The Tribunal can make orders of bond payment between **co-tenants** if one co-tenant's tenancy has ended. If you have left, you can make a written demand of your former co-tenant for payment of your share of the bond. You must give them 14 days to pay. If they do not pay you can apply to the Tribunal within 28 days of the end of the 14 days to pay. **Sub-tenants** covered by the Act can apply to the Tribunal for bond orders against their head-tenant. See *Factsheet 3: Bond*.

Goods left in the premises

The Tribunal can make orders for a remaining **co-tenant** to hand over goods left behind by a departed former co-tenant. You must apply within 28 days of leaving.

If you were a **tenant** or **sub-tenant**, get advice about goods left behind before taking action. There are various time limits for applying to the Tribunal – the shortest is 30 days, so get advice as soon as possible.

Examples

Example 1: If you are a **co-tenant** with the perpetrator, in a **fixed-term** tenancy and **you want to leave** there are two possibilities in tenancy law:

- If you have an AVO or other documentary evidence of DV (see Ending tenancy due to domestic violence sample letter: tenants.org.au/sample/termination-domestic-violence), you can give an immediate DV termination notice and leave. This will terminate your tenancy.
- You can apply to the Tribunal (NCAT) for an order ending your tenancy in the special circumstances of the case.

Example 2: If you are a **co-tenant** with the perpetrator, in a **periodic** tenancy and **you want to leave** there are three possibilities:

- If you have an AVO or other documentary evidence of DV (see Ending tenancy due to domestic violence sample letter tenants.org.au/sample/termination-domestic-violence), you can give a DV termination notice and leave. This will terminate your tenancy.
- You can apply to the Tribunal for an order ending your tenancy in the special circumstances of the case.
- You can give a 21 day termination notice and leave. This will terminate your tenancy.

Example 3: If you are a **co-tenant** with the perpetrator, in a **fixed-term** tenancy and **want the perpetrator to leave** there are two possibilities:

- You can apply to the Tribunal for an order ending the perpetrator's tenancy in the special circumstances of the case.
- A final AVO that excludes the perpetrator from the premises (by address) also terminates their tenancy.

Example 4: If you are a **co-tenant** with the perpetrator, in a **periodic** tenancy and **want the perpetrator to leave** there are three possibilities:

- You can apply to the Tribunal for an order ending the perpetrator's tenancy in the special circumstances of the case.
- An AVO may prevent the perpetrator from being at the premises but not terminate their tenancy.
- A final AVO that excludes the perpetrator from the premises (by address) also terminates their tenancy.

Example 5: If you are a **sub-tenant** of the perpetrator in a **periodic** tenancy (fixed-terms are rare in share-housing) and **you want to leave** there are three possibilities:

- You can give a termination notice of 14 days for breach of peace, comfort and privacy and leave. This will terminate your tenancy.

- You can give a termination notice of 21 days and leave. This will terminate your tenancy.
- If you have an AVO or other documentary evidence of DV, you can give an immediate DV termination notice and leave. This will terminate your tenancy.

Example 6: If you are the **head tenant** of the perpetrator in a **periodic** tenancy & **you want them to leave** there are 4 options:

- You can give a termination notice of 90 days.
- You can give a termination notice of 14 days for breach of your peace, comfort and privacy.
- A final AVO that excludes the perpetrator from the premises (by address) also terminates their tenancy.
- You can apply to the Tribunal for termination of their tenancy for your hardship.

Further information

- **Sample letter:** *Ending tenancy due to domestic violence:* tenants.org.au/sample/termination-domestic-violence
- **Related factsheets:** *Factsheet 3: Bond*
Factsheet 9: You want to leave
Factsheet 10: Landlord ends agreement
Factsheet 11: NCAT
Factsheet 15: Sharehousing
Factsheet 16: Ending tenancy early
Factsheet 25: Goods left behind
- Podcast episode: *Get me outta here*
tenants.org.au/resource/renting-matters#ep3

Contacts

- DV phone line: **1800 656 463**
- Tenants Advice Services: see numbers below
- Community Legal Centres: www.clcnsw.org.au
- Womens Legal Service NSW: **1800 810 784**

Help with pets

- Paws and recover – support to share the care of pets during a health crisis and difficult times
<https://www.pawsandrecover.com/>
- Lucy's project – national organisation working to improve access to supports for people and animals experiencing domestic violence
<https://lucysproject.com.au/>
- RSPCA Community Domestic Violence program, phone: (02) 9782 4408.
<https://www.rspcansw.org.au/what-we-do/working-in-communities/community-domestic-violence-program/>

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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	9559 2899
• 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

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. ©Tenants' Union of NSW