

# Ending fixed-term tenancy early

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet sets out your legal options if you want to end a fixed-term tenancy agreement early in NSW. **Please note** that this factsheet is about ending a **fixed-term tenancy** (an agreement for a set period of time, e.g. 12 months). If you are in a **periodic tenancy** (an ongoing agreement where the fixed-term has expired or is not specified), please see [Factsheet 09: You want to leave](#).

## Leaving during a fixed-term

If you need to leave a fixed-term tenancy before it ends, you have options. You can:

- end your tenancy agreement for certain **legally specified reasons**; or
- **break** your tenancy agreement – end it without a legally specified reason (a break fee may apply); or
- **transfer** your tenancy to someone else (you need the landlord's written consent).

Each of these options is discussed below.

It is best to get advice before taking action to end your tenancy. You can contact your local Tenants Advice and Advocacy Service (contact details below).

## Legally specified reasons to end a fixed-term tenancy

If you end your tenancy for one of the **legally specified reasons outlined below**, you do not have to pay a break fee.

To end your tenancy in one of these ways, you must:

- give the landlord/agent a written **termination notice**, and **vacate** (i.e. move out and return the keys), and/or
- apply to the NSW Civil & Administrative **Tribunal** (NCAT) for a **termination order**. If the Tribunal makes the order, it will end your tenancy and specify the day by which you must vacate.

The **termination notice** must be in writing, signed by the tenant and say the address of the premises, the day by which you will vacate (check how much notice is required), and the reason.

You must **properly send or deliver the notice** to the landlord/agent, either by email (to an email address specified by the landlord/agent for the service of documents of that kind); or by post; or by hand (in an addressed envelope to a mailbox at their home or business address); or in person.

Keep a copy of the notice and record how and when you sent or delivered it. If you post the notice, allow 7 working days for delivery. You can withdraw the termination notice at any time with the landlord's (and any co-tenants') consent.

## Ending tenancy early due to breach of agreement

If your landlord/agent has **breached** the tenancy agreement, it's a good idea to get advice from your local Tenants' Advice and Advocacy Service about what action to take. As an **alternative to terminating**, you could 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).

If you want to terminate your tenancy agreement due to breach by the landlord, you can either:

- give a minimum 14-day termination notice that says it is for breach of agreement, or
- apply to the Tribunal for a termination order (see below).

If you give a termination notice 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, or that the breach was not serious enough to justify termination, it may cancel your notice and you may be found to have 'abandoned' the premises (see 'breaking the agreement' below).

## Applying to the Tribunal for a termination order for breach

If you want the Tribunal to make a termination order for breach by the landlord/agent, 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.

## Ending tenancy early due to domestic violence

If you or your dependent child have experienced domestic violence, you can end your tenancy immediately by giving the landlord/agent and any other co-tenants a **Domestic Violence Termination Notice (DVTN)** and vacating the property. You

will not have to pay a break fee. You can use our [sample DVTN – Ending tenancy due to domestic violence](#).

For the DVTN to be valid, you will need to attach a document such as a **Declaration by Competent Person**, or an **Apprehended Domestic Violence Order**, or certain other evidence. For more information, see [Factsheet 12: Domestic violence and renting](#).

If you are the **remaining co-tenant** in a fixed-term agreement after another co-tenant has ended their tenancy due to domestic violence; and you are not the relevant domestic violence offender; you can apply to the Tribunal to end your tenancy.

### Ending tenancy early due to premises being unusable

Give an immediate termination notice and vacate if the premises:

- are destroyed or become wholly or partly unliveable (e.g. due to fire or flood – not due to breach of agreement), or
- can no longer be lawfully used as a residence, or
- are acquired by compulsory process (e.g. the government takes the land to build a freeway).

### Ending tenancy early due to a rent increase in a 2-year or more fixed term

If you have a fixed-term agreement of **2 years or more**, the landlord/agent can raise your rent once in a 12-month period, with 60 days proper written notice (see [Factsheet 04: Rent increases](#).) However, even if the landlord/agent gives you proper notice, you have the option to end the agreement – 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; and you must give it to the landlord/agent before the rent increase takes effect.

### Terminating due to breach of disclosure requirements

If the landlord/agent failed to disclose to you certain legally specified **material facts** prior to you entering the agreement, or if they made false representations to induce you to enter into the agreement, you can either:

- Give a minimum 14-day termination notice that says the landlord has breached disclosure requirements. The landlord/agent may apply to the Tribunal to dispute your notice. If the Tribunal does not agree that the landlord/agent has breached the disclosure rules, it may cancel your notice and the tenancy will continue, or order you to pay compensation.
- Apply to the Tribunal for a termination order and compensation because you suffered loss as a result of the landlord/agent's contravention of the disclosure rules (e.g. costs of relocation). The Tribunal will determine whether the breach of the disclosure rules are, in the circumstances of the case, sufficient to justify termination.

For a list of the legally specified material facts that the landlord/agent must disclose to you, see [Factsheet 02: Starting a Tenancy](#). It's also a good idea to get advice from your local Tenants Advice and Advocacy Service.

### Ending tenancy early due to extraordinary grounds

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

The landlord wants to **sell the premises and they did not tell you this before entering into the tenancy agreement** – sample letter: [Ending tenancy due to sale of premises](#).

You've been offered and accepted a place in **social housing** – sample letter: [Ending tenancy due to offer of social housing](#).

You need or have accepted a place in an **aged-care facility**.

The landlord failed to disclose to you that the premises were listed on the **Loose-filled Asbestos Insulation (LFAI) Register** prior to you entering into the agreement, or the premises have been listed on the LFAI Register during the tenancy.

Vacate according to your notice. You will not have to pay a break fee.

### Ending tenancy early due to undue 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 pay the landlord compensation for breaking the fixed-term tenancy early.

## Breaking the agreement

If you want to end the tenancy without using one of the legally specified reasons above, you need to **break the agreement**. There is no notice period, but it is reasonable to give some warning. Write to the landlord/agent and include your name, the address of the premises, and the date you will **vacate** (i.e. move out and return the keys). See our sample letter – [Ending tenancy early](#). You do not need the landlord's consent – you end your tenancy by vacating. (The law calls this 'abandoning' the premises.) You must pay rent until the day you vacate. In addition to paying rent until you vacate, a **break fee** will apply.

### How much is the break fee?

For fixed-term tenancy agreements of 3 years or less, the break fee is regulated and fixed to the following amounts, depending on which part of the fixed term period you are in:

- If you have been in the tenancy for less than 25% of the fixed term: 4 weeks rent
- If you have been in the tenancy for 25% to less than 50% of the fixed term: 3 weeks rent
- If you have been in the tenancy for 50% to less than 75% of the fixed term: 2 weeks rent
- If you have been in the tenancy 75% or more: 1 week's rent

You may be able to **negotiate** with the landlord – write to them and tell them you want to leave and how much notice you are able to give (if any). They may agree to waive the break fee. Discuss whether the landlord will claim from your bond. For information on how to claim your bond and what the landlord/agent may claim for, see [Factsheet 03: Bond](#). Put any agreement you reach with the landlord/agent in writing. See also [Tips: Negotiating with the landlord](#).

To break a fixed-term agreement with an initial contract length of **more than 3 years**, check the terms of your agreement. It's a good idea to get advice from your local Tenants Advice and Advocacy Service (contact details below). You may have to pay 'compensation' to the landlord to cover advertising costs, re-letting fees, and lost rent until a new tenant is found. Your agreement may set a break fee, but the landlord must still make sure they don't claim more compensation from you than they actually lost. They also need to take all reasonable steps to reduce (or 'mitigate') their loss. Keep communicating with the landlord/agent to check if they have been looking for new tenants.

## Transfer of tenancy

A tenancy can be transferred from one person to another, with **written consent** from the landlord. The landlord may refuse, and does not need to have a good reason to withhold consent. However, the landlord must not 'unreasonably' refuse consent if the tenants taking over the tenancy include **one of the original tenants and one or more additional tenants**.

See [Factsheet 18: Transfer and sub-letting](#).

## See also

- [Factsheet 09: You want to leave](#)
- [Factsheet 03: Bond](#)
- [Factsheet 11: NSW Civil & Administrative Tribunal](#)
- [Factsheet 12: Domestic violence and renting](#)
- [Factsheet 18: Transfer and sub-letting](#)
- [Factsheet 25: Goods left behind](#)
- [Tips: Negotiating with the landlord](#)
- [Easy read fact sheet: Moving out](#)
- [Podcast episode: Get me outta here](#)

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### **For free advice, call your local Tenants Advice & 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

**WEB:** [tenants.org.au](https://tenants.org.au)

**NSW FAIR TRADING:** 13 32 20

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