

Ending fixed-term tenancy early

As a tenant you have rights under the Residential Tenancies Act 2010 and Residential Tenancies Regulation 2019. This factsheet summarises the law in NSW about ending a fixed-term tenancy agreement during the fixed term. Please note that this factsheet is about ending a fixed-term tenancy. If you are in an ongoing periodic tenancy (where the fixed term has expired or is not specified), please see Factsheet 09: You want to leave).

Leaving during a fixed-term tenancy

You can end your tenancy agreement during the fixed term for certain legally specified reasons (given below).

If you want to end your agreement early without one of the legally specified reasons, consider:

- transferring your tenancy to someone else (you need the landlord's written consent)
- breaking your tenancy agreement (this can be costly).

See 'Transfer of tenancy' and 'Breaking the agreement' at the end of this factsheet.

Legally specified reasons to end a fixed-term tenancy

You can end your tenancy ('terminate'):

- because the landlord/agent has 'breached' the tenancy agreement – they have failed to meet their obligations under the agreement
- because the premises have become unusable
- because the landlord/agent has increased the rent during a fixed-term tenancy agreement of 2 years or more
- on a prescribed 'extraordinary' ground (such as because of domestic violence)
- because you would suffer undue hardship if the tenancy continued.

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

- give the landlord/agent a written termination notice and vacate – move out and return the keys – according to your notice, 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

The termination notice must be in writing, signed by you and say:

- the address of the premises
- the day by which you will vacate (check how much notice you must give)
- the reason

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

Talk to your local Tenants' Advice and Advocacy Service about which of the following actions to take.

Alternative to terminating

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).

Giving a termination notice

Give a minimum 14-day termination notice that says it is 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, it may cancel your notice and you may be found to have abandoned the tenancy.

Applying for a termination order

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.

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 premises being unusable

Give an immediate termination notice and vacate if the premises:

- are destroyed or become wholly or partly unliveable (not due to breach of agreement), or
- can no longer be lawfully used as a residence, or
- are acquired or appropriated by a government authority by compulsory process.

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

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.

Ending tenancy early due to extraordinary grounds

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

- You've been offered and accepted a place in social housing.
- You need or have accepted a place in an aged-care facility.
- The landlord wants to sell the premises and they did not tell you this before entering into the tenancy agreement.
- 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.
- The premises have been listed on the LFAI Register during the tenancy.

Vacate according to your notice. You will not have to pay the landlord compensation for terminating early.

Ending tenancy early due to 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 compensate the landlord for breaking the fixed-term tenancy early.

Transfer of tenancy

You can transfer the whole tenancy to another person if the landlord gives written consent. The landlord may refuse, and does not need to have a good reason to withhold consent.

If you are a co-tenant and want to transfer your tenancy when at least one of the original tenants will remain, the landlord must not 'unreasonably' withhold consent.

See Factsheet 18: *Transfer and sub-letting*.

Breaking the agreement

Write to the landlord to tell them you want to leave. Give as much notice as possible. Try to get their consent in writing.

If the landlord does not consent, you can still end your tenancy by moving out and returning the keys.

Stop paying rent on the day you vacate. Note that there are money consequences for breaking the agreement.

For agreements entered into *after* 23 March 2020

For tenancy agreements of 3 years or less entered into on or after 23 March 2020, 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 more than 25% but less than 50% of the fixed term: 3 weeks rent
- If you have been in the tenancy for more than 50% but less than 75% of the fixed term: 2 weeks rent
- If you have been in the tenancy for more than 75%: 1 week's rent

For agreements entered into *before* 23 March 2020

Check your tenancy agreement under 'Additional terms'. If a break fee is specified, this is the amount you have to pay the landlord. If no break fee is specified but "compensation" to the landlord is specified, this could be costly.

For fixed-term agreements entered into before 23 March 2020, the **set break fee** is:

- 6 weeks rent, if less than half of the fixed term has expired, or
- 4 weeks rent.

OR

compensation to the landlord including advertising costs, re-letting fee and lost rent until a new tenant is found. The landlord must take all reasonable steps to mitigate their loss so keep communicating and check in with the landlord/agent if they have been looking for new tenants.

Negotiate

It is possible to negotiate an agreed amount of compensation with the landlord/agent. (The landlord may agree not to be compensated.) Discuss whether the landlord will claim from your bond. Put any agreement in writing.

If you cannot come to an agreement, the landlord/ agent may apply to the NSW Civil and Administrative Tribunal for an order that you pay a certain amount in compensation. The landlord must:

- provide the Tribunal with details of their losses (e.g. lost rent, advertising costs, an agent's re-letting fee)
- outline the steps they took to minimise their losses (e.g. advertising for a new tenant without delay).

In the meantime:

- Keep negotiating. You may come to an agreement before the tribunal hearing.
- Claim your bond back. See Factsheet 03: Bond.

Factsheet updated: July 2021

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

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