

# Sale of rented premises

It can be a stressful experience if the landlord wants to sell your rented home. As a tenant you have rights under the *Residential Tenancies Act 2010* and the *Residential Tenancies Regulation 2019*. This factsheet outlines the rules the landlord/agent must follow in relation to accessing the property, notice periods, and what happens to your tenancy agreement (commonly called a 'lease').

## The landlord has the right to sell the property at any time.

However, under tenancy law there are a number of rules that govern how they do this. Some landlords may hire a different agent just for the sale. All agents are subject to the same laws as the landlord.

If the property is being sold, **you may want to leave**. The steps to end your tenancy depend on the type of agreement you have and when you were notified of the sale. See below: 'I want to leave'

It is possible for your **tenancy to continue after a property is sold** – if neither you nor the landlord have ended the tenancy agreement. However many landlords/agents will seek to **end the tenancy agreement**, and it is legal for them to do so – if the legal requirements are met. The landlord/agent must provide **correct notice**, and **evidence** of sale or proposed sale. See below: 'If the landlord wants to end the tenancy.'

If the landlord **stops paying their loan** and the bank/lender wants to take back the property and sell it, certain other rules may apply to your tenancy – see [Mortgagee repossession](#).

## Showing the property

The landlord/agent has the right to access property to show it to prospective buyers. However, they must:

1. give you written notice at least 14 days before the property is first made available for showing; and
2. make all reasonable efforts to agree with you as to the days and times for showing; and
3. give you 48 hours notice before each showing, unless you have agreed to a certain schedule of showings.

You cannot **unreasonably** refuse to agree to days and times for showing the property. **You do not need to agree to more than 2 showings per week.**

If you and the landlord/agent fail to agree about inspection times, they may show the property not more than twice a week and must give you at least 48 hours notice each time. They must, if they can, notify you of a proposed time.

**You have the right to be present when your rental home is being shown**, or have someone else attend on your behalf. People entering the property when you are not there may also be a problem for your insurance (if you have any) – you can ask your insurance company about this.

See also [Factsheet: Privacy and access](#) and [Tips: Negotiating with the landlord](#).

## Time restrictions on access

The landlord/agent or third parties must not:

- enter before 8am or after 8pm,
- enter on a Sunday or public holiday, or
- stay longer than necessary unless you consent.

## Open house inspections

The law does not expressly allow or prohibit 'open home' inspections. The law uses the term 'prospective purchasers' when outlining the landlord's right to access the property to show people interested in buying the property. Many real estate agents insist that open house showings fall within this right. The Tenants' Union does not agree. Generally speaking, an open house inspection brings more than prospective purchasers to your home. It is an open invitation to the world, anyone can enter – including passers-by, nosey neighbours, and prospective burglars.

If you would prefer that the landlord/agent did not hold open home inspections you could write to them and offer set times for inspection, and importantly, seek an undertaking that the people who enter are **registered prospective purchasers**.

## Inspections by tradespeople

The landlord/agent or a prospective buyer may also want a tradesperson or architect to inspect the property. As the law has no specific provision for this, they must use standard access provisions. See [Factsheet: Privacy and access](#).

## Condition of the property during showings

You must keep your rental home 'in a reasonable state of cleanliness' during your tenancy. You do not need to do more than this. If you agree to do more, ask for a rent reduction.

## Asking for a rent reduction

You can ask the landlord/agent to reduce the rent for the period that your rental home is being shown. However there is no requirement for them to agree. If the landlord/agent agrees to reduce the rent, have them confirm it in writing.

## If your goods are damaged/stolen during a showing

If your goods are stolen or damaged during an inspection, apply to the NSW Civil and Administrative Tribunal (NCAT) for compensation. You must be able to show that your loss was due to the conduct of the landlord/agent or some other authorised person such as a tradesperson. You will need to present **evidence** that shows their misconduct as well as the existence/value of the goods.

## If there is a dispute: Applying to the Tribunal

If the landlord/agent or a third party does not comply with:

- the maximum (or agreed) number of times they can access the premises
- correct notice periods
- restrictions on access times

then you can apply to the NSW Civil and Administrative Tribunal (NCAT) for orders:

- to stop the landlord/agent entering the premises (apply within 3 months of becoming aware of them doing so)
- to specify or limit the days, times, and purposes for which, the landlord/agent or other authorised person can enter (apply within 3 months of becoming aware of the problem).

## Application by landlord

If you refuse the landlord/agent access to the premises when they are legally allowed, you are in breach of your tenancy agreement. They may apply to the Tribunal for an order authorising them or another person to enter the premises.

## Can the landlord take photos/videos?

The landlord/agent can photograph the outside of the premises. They can also take photos or videos inside the premises to market the property (for sale or rent). However, they can only do this **once**, and it must be done either in the **28 days before marketing starts** or in the **28 days before your tenancy agreement ends**. The landlord agent must also:

- give you reasonable notice of the access; and
- give you a reasonable opportunity to move your possessions out of frame of the photo or video

The landlord/agent must obtain your written consent to publish photos or visual recordings showing any of your belongings, however you cannot unreasonably withhold consent. It is reasonable for tenants to withhold consent where they are in circumstances of domestic violence.

The landlord and their agent can share the images with each other for the purposes of inspection, maintenance, or repairs, without your consent.

If photos are published without your consent, you can apply to the Tribunal for order/s:

- that the landlord destroy the photos or give them to you
- that the landlord/agent not use the photos in advertising
- for compensation for financial loss you suffered as a result

You must apply within 3 months of the breach.

See also [Factsheet: Privacy and access](#).

## 'For sale' signs and on-site auctions

If the property is a house, the landlord/agent needs your consent to put a 'for sale' sign on the premises. If they do so without your consent, you can remove the sign and apply to the NSW Civil and Administrative Tribunal (NCAT) for an order that they do not do it again as it is a breach of the access rules and your right to peace, comfort and privacy in your use of the premises.

If the property is a house, the landlord/agent cannot hold an auction on site, unless you consent.

If the property is in an apartment block, the landlord/agent

can put a for-sale sign or hold an auction on any common property without your consent.

## If the landlord wants to end the tenancy

The landlord must have a **valid legal reason** with **evidence**, to end your tenancy. This requirement applies to all residential tenancy agreements. If you want to dispute the reason given for eviction as **not genuine**, you have the right to challenge the validity of the termination notice at the NSW Civil and Administrative Tribunal (NCAT). **Even if the termination notice and reason are valid**, there are further steps before a tenancy ends. See more in [Factsheet: Eviction – landlord ends tenancy](#).

The **valid reasons** to end a tenancy in relation to selling are either:

1. the landlord **proposes to sell** the property; or
2. the landlord **has sold** the property.

Additionally, for both actual and proposed sale, the **contract must require the owner to give vacant possession** of the premises to the buyer.

They must also provide one of the following types of **evidence**:

**For proposed sale:**

- A copy or part of the proposed **contract of sale**; or
- A copy or part of the **agency agreement** between the landlord and an agent for the sale of the premises.

**For actual sale:**

- A copy or part of the **contract for the sale** that has been entered into; or
- A **written statement from a solicitor or licensed conveyancer** carrying out work for the landlord in connection with the contract for the sale.

To be valid, these documents must include certain details, such as:

- the names of the parties;
- the date the document was signed & will be completed; and
- that the sale requires the landlord to give vacant possession of the premises to the buyer.

## Notice periods

The landlord/agent **must give you the required number of days notice**. If they do not, then the termination notice is not valid.

The required number of days notice depends on the **reason** and the **type of agreement you have with the landlord** – fixed-term or periodic. A 'fixed-term' agreement is one that goes for a specified amount of time, such as 6 or 12 months. A 'periodic agreement' is ongoing – the fixed term has expired or is not specified.

If a termination notice is posted to you, the landlord/agent must allow an **extra 7 working days for delivery**. For more on what must be in the termination notice see [Factsheet: Eviction](#).

**For proposed sale of property:**

- The landlord/agent must give **at least 90 days notice** to end a fixed-term agreement of **over 6 months**, or a **periodic** (ongoing) agreement
- The landlord/agent must give **at least 60 days notice** to end a fixed-term agreement of **6 months or less**.

**For actual sale of property:**

- If the landlord has sold the property, they must give at least **30 days notice** to end the tenancy.

## No eviction during a fixed term

The termination date given by the landlord/agent to end a **fixed-**

**term agreement must be on or after the last day of the agreement.** In other words, if you have not breached the agreement, they cannot usually evict you until the **fixed-term ends**. This is the case for both proposed sale and actual sale of premises.

## I want to leave

There are several reasons that you might not want to live in a property that is being sold. If you want to leave you will need to **end your tenancy agreement** (also called a 'lease').

How you end the tenancy agreement depends on which type of agreement you have (fixed-term or periodic); if you have already received a notice of termination; and if you want to leave earlier than the date set out in the termination notice. A 'fixed-term' agreement is one that goes for a specified amount of time, such as 6 or 12 months. A 'periodic' agreement is ongoing – the fixed term has expired or is not specified.

To end your tenancy, you will usually need to **give the landlord/agent a written termination notice** and then move out and return the keys by the date in your notice.

### Periodic (ongoing) agreement

If you are in a periodic (ongoing) agreement, you can give the landlord a **21-day** termination notice. See [sample letter: Ending a periodic tenancy agreement](#).

If you are in a periodic agreement and **have received a termination notice** based on sale or proposed sale, and you want to leave **before the date given by the landlord**, you can end your tenancy at any time before the termination date listed on the notice. You do so by giving **vacant possession** – moving out and returning the keys. You stop paying rent from the day you give vacant possession. You are not required to give notice to the landlord/agent; however it is a good idea to inform them, in writing. See also Factsheets: [Eviction – landlord ends tenancy](#) and [How do I end my tenancy?](#)

### Fixed-term agreement

If you are in a fixed-term agreement and you **have received a termination notice** from the landlord/agent you can leave before the termination date listed on the notice, by giving the landlord a **14-day early exit notice**, in line with these time periods:

- If you have a fixed-term agreement of **6 months or less**, the date in your early exit notice can be any day in the **60 days before the agreement ends**
- If you have a fixed-term agreement of **more than 6 months**, the date in your early exit notice can be any day in the **90 days before the agreement ends**

You stop paying rent from the day you **move out and return the keys** – which is also the date you put in your early exit notice.

Alternatively, if the landlord/agent **did not disclose** the proposed sale **before** entering into the fixed-term tenancy agreement with you, then you can end the agreement **at any time after they tell you of their intention to sell**, using a **14-day termination notice**. In this case, you will **not have to pay a 'break fee'** for ending the agreement early. Make sure you have their intention to sell in writing. See [sample letter: Ending tenancy due to sale of premises](#).

In the rare event that the landlord has **already prepared a contract to sell the property and did not tell you about the sale before you began the tenancy agreement**, you can apply directly to the Tribunal (no notice required) for an order ending your agreement. You can also ask for an order that the landlord compensate you for any costs incurred as a result of the termination.

See also Factsheets: [Eviction – landlord ends tenancy](#), [How do I end my tenancy?](#) and [NSW Civil & Administrative Tribunal](#).

## Ongoing tenancy agreement after sale

It is possible for a tenancy to continue after a property is sold – **if neither you nor the landlord have ended the tenancy agreement**. In this case the buyer becomes your new landlord from the settlement date. Your tenancy agreement carries on as it was before, with the same terms. The old landlord/agent should write to you with the new landlord's **name** and the **date** from which you pay rent to them.

**You don't have to sign a new agreement** with the new landlord if you don't want to – your old agreement is still in force.

If the new landlord/agent wants to **end your tenancy**, they can only do so with a **valid legal reason and evidence**. See [Factsheet: Eviction – landlord ends tenancy](#).

If you are in a **fixed-term agreement**, then the new landlord cannot usually end your tenancy until the fixed term ends. If you are in a **fixed-term agreement of over 3 years**, and the agreement is registered with the Registrar General (NSW Land Registry Services), the new landlord is subject to the whole agreement. If the agreement is **not registered**, it ceases to be a fixed-term agreement – it becomes a periodic agreement – an ongoing agreement with no fixed term.

## More info

Factsheets: [Privacy and access](#), [How do I end my tenancy?](#) [Eviction](#), [Mortgagee repossession](#)

Tips: [Negotiating with the landlord](#) Podcasts: [Hit the road Jack](#), [Don't make me leave](#), and [Get me outta here](#).

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**NSW FAIR TRADING:** 13 32 20

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