

## Evicting a social housing tenant who declines to move to alternative housing

### ***This information sheet has been produced for residents of Millers Point.***

Sections 148 to 151 of the *Residential Tenancies Act 2010* spell out the process that a social housing provider must follow if they wish to evict a social housing tenant who refused to move to alternative housing. These sections should be read together with the procedure approved by the Minister [here](#). To date few social housing landlords have utilised them.

Initially, in Millers Point, FACS Housing made informal offers of alternative housing to residents. However, in the first half of 2016, it commenced making two formal offers. If residents refuse these offers, they may appeal to the Housing Appeals Committee for a recommendation that the offers were unreasonable. Otherwise, FACS Housing will follow the procedure approved by the Minister.

### ***Notice of intention to issue Notice of Termination [14 days, being the length of time that this part of the process is required under the relevant legislation]***

Before giving notice of termination of an existing agreement to a tenant, the landlord is to advise the tenant of the decision to do so by a notice in writing. The notice must, among other things, contain particulars of why the landlord wishes the tenant to move to alternative premises. It also should state that the tenant may apply to the landlord for a review of the decision within fourteen (14) days after the 'Notice of intention to issue a Notice of Termination' is given to the tenant. It must give particulars of how such an application may be made. The notice must state that the tenant is entitled to make representations to the landlord orally or in writing.

The 14-day period in which a tenant may apply to the landlord for a review of the decision to issue a notice of termination commences from the date that the tenant is given the 'Notice of intention to issue a notice of termination'.

### ***Review by Landlord [7 days]***

A tenant may then decide whether or not to apply to the landlord for a review of the decision.

The tenant's application to the social housing provider asking that it review its decision is best made in *writing*. It must contain all the tenant's reasons for asking for a review and provide all supporting documentation. It is the tenant's last chance to do this.

If the tenant does apply to the landlord for a review, the landlord is to review the decision in accordance with the procedure approved by the Minister. The Reviewer must give consideration to representations made by the tenant and ensure that the tenant is allowed to adequately communicate or articulate their views. The Reviewer must take into account specified factors which, in Millers Point, include the need to re-develop a particular property, neighbourhood, locality or estate, and the need to maximise the use of all housing resources.

The Reviewer shall within seven (7) calendar days of the receipt of the application for review from the tenant, hear and consider all required matters and record the considerations and proposed decision.

If the tenant puts in a rushed application for review and then thinks of other reasons for objecting to the proposed notice of termination, they should forward this additional information within seven days of their first letter. In their subsequent letter, they should ask the social housing provider to also consider the additional matters.

### ***Referral to the Housing Appeals Committee (HAC) [7 days]***

The Reviewer shall then automatically refer the matter to the HAC. The HAC shall be required to issue its recommendation with respect to a reference to it within seven (7) days of receipt of the matter from the Reviewer.

HAC shall take into consideration ONLY the matters which were before the Reviewer at the time of the original consideration. HAC will make its recommendation on the papers before it.

This means that the tenant's letter to the social housing provider seeking a review of its decision must provide all the tenant's documentation ... ***absolutely everything!***

***Decision of Landlord [5 days]***

Upon return of the recommendation from HAC, the Reviewer must give consideration to any recommendation from it. The Reviewer shall, within a period of five (5) days of receipt of recommendations from the HAC, make a decision.

The Reviewer may reject the recommendation of HAC.

***Right to second review if new offer made***

If there is a new offer of alternative premises, a second review shall be conducted in a similar manner and with similar procedural requirements as to the first review.

The tenant must apply for a review of all offers in order to cover themselves if they refuse all those offers.

***Termination notice [30 days]***

Generally, a termination notice is not to be given to the tenant before the later of the following: (a) the end of the 14-day period within which the tenant may apply for any review of the decision to give the termination notice, or (b) the end of any such review carried out in respect of that decision. The termination notice is ineffective unless the alternative premises in connection with which the termination notice is given are available for occupation no later than 7 days before the termination date.

***The Tribunal hearing***

The first hearing day of the matter at the NSW Civil and Administrative Tribunal may be as soon as 48 days (being 44 days, plus 4 days for delivery of notice) from receipt of the 'Notice of intention to issue Notice of Termination' where the tenant does not lodge an application for a review of the decision. It may be as soon as 60 days where the tenant does lodge an application for a review of the decision or less where the review process has proceeded quickly.

Before making an order to terminate the agreement, the Tribunal must be satisfied that alternative premises (which may or may not be the same as the alternative premises in connection with which the notice was given) are available for occupation by the tenant. This being the case, the Tribunal is bound to make an order terminating the tenancy, so long as the social housing provider has followed the proper procedure. The Tribunal must evict the tenant, regardless of the recommendation of the HAC, where the landlord has followed the proper procedures. The justice of the situation is not relevant.

Generally the Tribunal will make an order giving the tenant between 0 and 28 days to give vacant possession of the property.

***Eviction***

A tenant may face a sheriff at their door enforcing a warrant of possession as soon as 48 days from receipt of the 'Notice of intention to issue Notice of Termination' ... but in all likelihood this will be longer, especially where the tenant applies for a review of the decision and defends the matter before the Tribunal.