

Warrants for possession in tenancy law

As a tenant you have rights under the *Residential Tenancies Act 2010* and Regulation. This information is for tenants facing termination, when a warrant for possession has been issued by the Tribunal.

Termination orders

In NSW, the Residential Tenancies Act provides for the circumstances for the termination of a residential tenancy agreement. The processes are highly regulated and you may only be forcefully evicted from the premises by the Sheriff of NSW with a proper order and warrant from the Tribunal or Court.

If your tenancy is terminated by an order of the Tribunal or Court, the termination order will also specify the date by which vacant possession must be given. The 'order for possession' may take effect immediately or it may be suspended until a later date.

It is important that you get a copy of the Tribunal or Court orders. The "Notice of Orders" should tell you why your tenancy has been terminated and when the premises must be returned to the landlord. The orders may also set out further conditions so it is important that you read the orders carefully.

The majority of termination orders are made by the NSW Civil and Administrative Tribunal. Only in very limited circumstances are termination orders made by the Courts.

Warrants for possession under the Residential Tenancies Act

If you are still in the premises after the date for possession then you will be in breach of the Tribunal orders and your landlord/agent can apply for a 'warrant for possession'. The Registrar of the Tribunal will determine if the termination order has been breached and then issue the warrant.

The time limit is 30 days to apply for the warrant. If the landlord/agent is out of time, they must demonstrate that the delay has been caused by genuine but unsuccessful attempts to reach an agreement with the tenant to reinstate the tenancy. If the Tribunal allows the extension, a warrant for possession will be issued.

Enforcement process Step 1: Warrant for Possession is issued by the Tribunal

Once the warrant for possession is issued by the Tribunal, the landlord/agent will have to take it to the Office of the Sheriff of NSW.

The warrant for possession must be executed within 28 days of the date of issue. If the warrant has expired, the landlord/agent will have to reapply for a new warrant and provide reasons for the delay.

The Tribunal will notify you when a warrant for possession is issued.

Enforcement process Step 2: Execution of the warrant for possession by the Sheriff

You can contact the Office of the Sheriff on: (02) 8688 4080 (operating hours are 8:30am - 4:30pm) or email cou@justice.nsw.gov.au to find out if the warrant has been delivered to the local Sheriff's office and when the Sheriff will be attending the premises. You should provide your name, the address of the premises including suburb and postcode, your landlord/agent's name and the NCAT number if known. If you email, use a clear subject line (e.g. Warrant for Possession Enquiry) and provide details of the tenancy (names, address, NCAT number) and outline your query.

Only the Sheriff is empowered to execute the warrant and evict you from the premises. Your landlord/agent may not do so even if they call on the Police.

We recommend that you do not resist the eviction and that you fully cooperate with the Sheriff. The Sheriff will inform you of the process and if you resist, they may use reasonable force and obtain the assistance of police.

You still have rights in relation to any goods that you leave behind. You should however take any important paperwork and cards with you, especially identity

documents so that you can apply for assistance such as Crisis Payment from Centrelink and/or housing assistance from charitable organisations.

Goods left behind

Your landlord/agent must not destroy or dispose of the goods that you leave behind before giving you a chance to recover them. Generally, you have 14 days to do so, however, every day that your goods remain in the property, you will be liable for a daily occupation fee (which is the rate of daily rent). Your rights are set out fully in *Factsheet 25: Goods left behind*, including seeking compensation for goods improperly destroyed by the landlord/agent.

Try to negotiate a date with the landlord/agent to recover your goods. Keep these communications in writing such as by email or text.

When you return to collect your goods, try to get all your possessions and leave the property genuinely vacant. Take photographs of the premises to show the state and condition of the property is reasonably clean and in the same condition as when you commenced the tenancy, except for fair wear and tear.

Pay to stay?

If your tenancy was terminated solely on the ground of failure to pay rent, you may be able to save the tenancy, even if the warrant for possession has been issued by the Tribunal. This is after the warrant has been issued or Step 1 above but before execution or Step 2.

You should check if the Tribunal orders terminating your tenancy state that you have “frequently failed to pay rent.” If the Tribunal did not make such a finding or found that it was not satisfied that you have “frequently failed to pay rent,” then you may be able to save the tenancy if you pay all of the rent owing, or come to an agreed repayment plan with the landlord/agent.

Remember, the “Pay to Stay” protection is only available if the tenancy was terminated solely on the ground for failure to pay rent in accordance with the tenancy agreement. You should read the Tribunal orders carefully. For more information, please also see *Factsheet 5: Rent Arrears*.

If you pay all the rent owing, make sure you keep all the evidence such as receipts or bank transfer confirmation and go to the real estate agency to get a copy of the updated rent ledger. If you have come to an agreement with the landlord/agent about a repayment plan, make sure it is in writing.

The landlord/agent *must* notify the Sheriff that this has occurred and by operation of the law, the warrant for possession ceases to have effect.

Failure to notify the Sheriffs Office is against the law and the landlord/agent can be fined up to \$2,200.

If the landlord/agent refuses to contact the Sheriff, you can apply to the Tribunal for an order directing the landlord/agent to comply with this requirement. You must do this on an urgent basis and before the Sheriff executes the warrant.

When the warrant for possession ceases to have effect, your landlord/agent may not enforce the order and evict you. This means you can remain in the property and the tenancy is effectively reinstated.

Please contact your local Tenants Advice and Advocacy Service (TAAS) for further advice and assistance. You can find your local TAAS contact details below or by entering your postcode or suburb at tenants.org.au

Further references:

- *Residential Tenancies Act 2010* – sections 89, 119, 120 and 121
- *Sheriffs Act 2005* – section s7A

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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