

Ending a Tenancy Policy

Purpose and Objective

The purpose of this document is to explain the policy for ending a Housing Plus residential tenancy. This includes social housing, affordable housing, and transitional housing.

Scope

- This policy applies to all clients (including applicants, former tenants and existing tenants) who accept accommodation in properties owned or managed by Housing Plus
- This policy describes the organization's objectives and policies regarding *Starting a Tenancy*.

References

Housing Plus will end tenancies in accordance with:

- 1) Residential Tenancies Act and Regulations.
- 2) The terms of the residential tenancy agreement.
- 3) Housing Plus policies.

Both the tenant and Housing Plus have rights and obligations under the above Act, the residential tenancy agreement and Housing Plus policies.

Definitions

Term: Tenancy Agreement

Definition: The Residential Tenancies Act 2010(NSW) (the RT Act 2010) defines a residential tenancy agreement as 'an agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence' (section 13(1)).

Term: Fixed Term Agreement

Definition: A fixed term agreement means a residential tenancy agreement for a tenancy for a fixed term.

Term: Transitional Housing

Definition: Transitional housing is interim accommodation (generally from three months up to eighteen months) that may be provided for people exiting or transitioning from crisis accommodation.

Responsibilities

Executive

- 1) Establish policy objectives

Management

- 1) Develops policies and procedures to achieve policy objectives
- 2) Coordinates and implements policy for *Ending a Tenancy*
- 3) Oversees training and ensures adoption by all employees responsible for Ending a Tenancy
- 4) Reviews policy and procedure on biannual basis to ensure compliance with legislation and adopts accordingly

Employee responsibilities

- 1) Understand and comply with Housing Plus policies regarding *Ending a Tenancy*

Policy

Tenants can expect Housing Plus to comply with the rights and obligations of a landlord under the *Residential Tenancies Act 2010*. Housing Plus expects tenants to comply with the terms of their tenancy agreement.

The intent of this policy is to explain how a tenant or Housing Plus can end a tenancy. The Tenancy Policy Supplement provides further information to support this document.

Reasons for ending a tenancy

A tenancy may be ended for a number of reasons, including:

Tenant Initiated	<ul style="list-style-type: none"> • The tenant provides notice that they are vacating the property and provides vacant possession (i.e. the tenant and all household members have moved out of the property and taken their belongings with them). This includes situations where: <ul style="list-style-type: none"> ○ Housing Plus relocates or transfers a tenant ○ A tenant is moving into private rental ○ A tenant enters long-term care
Housing Plus Initiated	<ul style="list-style-type: none"> • The tenant receives a final Apprehended Violence Order prohibiting them from access to their Housing Plus dwelling • The tenant abandons the property • The tenant has passed away and Housing Plus has obtained vacant possession • Housing Plus asks the tenant to vacate the property. This may occur where: <ul style="list-style-type: none"> ○ The tenant has breached their tenancy agreement and Housing Plus has obtained an Order for Termination of the tenancy and possession of the property ○ A fixed term transitional or a provisional lease has ended ○ The tenant is no longer eligible to live in an affordable housing property following a lease review ○ The tenant is on a continuous lease and they or their partner/spouse owns a property that they could live in or sell ○ A Landlord has given Housing Plus a Notice of Termination (Leasehold Properties)

End of a Head Lease

Housing Plus will prepare clients for the possibility that our head landlord may terminate our tenancy by giving appropriate information at the start of a tenancy, signing fixed term agreements and advising clients in writing and verbally of the options available to them when our tenancy ends.

We meet our client responsibilities under a head tenancy agreement by ending the tenancy with our client in accordance with the notice period given to us by the head landlord, if this notice is legal.

When it is necessary to end a tenancy with our client because of the end of a head tenancy agreement, we will offer our client appropriate rehousing, unless they are in breach of their current agreement (and even then we will consider rehousing them if we can reach a satisfactory compliance agreement) or the agreement with the client was originally of the understanding that it was short term and non-renewable

End of a transitional or provisional tenancy

Housing Plus will always provide the 30 days notice at the commencement of the lease agreement when ending a transitional, or provisional tenancy.

If the client does not vacate, possession will be sought at the Tribunal if notice is not given before the end of the fixed term, the tenancy becomes continuing which means that notice can then only be given for breach of tenancy conditions.

When a tenancy is for a fixed term as a result of policy and program requirements that the housing be temporary, the client will be given assistance finding appropriate exit housing at the end of the term.

When a transitional tenancy ends and the client has been unable to secure appropriate rehousing, or it is not appropriate for the client to move at that time, the term may be extended by a further fixed term, if this is possible. If the tenancy cannot be extended, every attempt to find alternative housing will be made.

Management Initiated Transfer

Housing Plus may transfer a tenant for Management reasons including:

- a) Under Occupancy
- b) Over Occupancy
- c) Utilisation of a modified dwelling
- d) Property upgrade or site redevelopment

In all circumstances Housing Plus will consult with the tenant to negotiate a tenancy transfer to a suitable dwelling in the tenants preferred location. Under exceptional circumstances, Housing Plus may use a 90 day no cause Notice to Terminate or the Tribunal to force the move.

Client Rights

Housing Plus will advise our clients of their rights and responsibilities when a Notice to Terminate is issued and when legal action is taken at the Tribunal that may result in their tenancy being terminated. This will include referral to tenancy advice, interpreters and support if their tenancy is threatened or is ending.

Tenant obligations when they end their tenancy

Tenants may end a fixed term lease before it is due to end if they give Housing Plus sufficient notice. The tenant must give Housing Plus the following notice:

- a) 14 days notice for a fixed-term lease, of if moving into social housing
- b) 21 days for a continuous lease, or
- c) 7 days notice for a transitional property

The tenant must give written notice of their intention to vacate, specifying the date they want the tenancy to end and allowing for the correct number of days for giving notice.

Housing Plus will always agree to end a lease early if a tenant wishes to move out before the end of their fixed term.

The tenant must remove all of their belongings and any rubbish from the property and leave the property in a clean and tidy condition that is as near as possible to the condition it was in at the beginning of the tenancy, apart from fair wear and tear. 'Fair wear and tear' means deterioration over time as a result of reasonable use and the action of natural elements, even though the property receives reasonable care and maintenance.

Tenants are responsible for locking the property and returning all the keys given to them at the start of the tenancy to Housing Plus, as well as any additional keys that were issued or cut during the tenancy. If keys are not returned to Housing Plus at the end of tenancy, Housing Plus may charge the tenant to rekey the property.

When Housing Plus ends the tenancy

Housing Plus will issue a Notice of Termination when it decides to recover a property because:

- a) The tenant has breached their tenancy agreement
- b) A fixed term or a provisional lease has ended
- c) Other household members may be eligible for a provisional lease or recognition as a tenant, and the tenancy has not been relinquished
- d) A provisional lease or recognition as a tenant has not been granted to other household members and they are required to vacate
- e) The tenant has rejected a final offer of alternative social housing
- f) The sole tenant has passed away

Housing Plus will give tenants:

- a) Notice in writing
- b) Notice in the required time period, as stated in the *Residential Tenancies Act 2010*
- c) The reasons for ending the agreement
- d) A reasonable opportunity to be present at the final property inspection

If the tenant does not move out, Housing Plus will seek an Order for Termination and Possession from the NSW Civil and Administrative Tribunal. This order compels the tenant to move out and sets a date for Housing Plus to take possession of the property.

No Cause Terminations (Section 85)

Housing Plus should not routinely terminate agreements under Section 85 of the Residential Tenancies Act 2010 (NSW) as this section of the Act does not require a tenant to be given reasons for termination and does not afford the tenant recourse to the NSW Civil and Administrative Tribunal.

There are circumstances in which Housing Plus may seek termination under Section 85 Residential Tenancies Act 2010 (NSW), these may include:

- Leasehold properties where Housing Plus has been issued a Section 85 Termination by the Landlord.
- Properties that do not meet Community Housing Standards and require rectification
- Leasehold properties where the market rent is no longer financially sustainable for Housing Plus

To ensure that transparency and fairness is afforded to tenants when terminating a lease, in most circumstances it is expected that the use of S85 is used only where there are no other options available.

Appeal of No Cause Termination (Section 85)

If a termination notice is issued under Section 85 of the RTA, the tenant has a right to Appeal the decision in accordance with the Housing Plus Appeals policy before the Section 85 Termination is implemented.

Inspecting the property when a tenancy ends

Close to the time the tenant will be vacating, Housing Plus will try to arrange an inspection of the property with the tenant. During this inspection, Housing Plus will complete the original property condition report by comparing the current condition of the property with its condition at the start of the tenancy. If there is any damage to the property beyond fair wear and tear, or cleaning is required, Housing Plus will advise the tenant of any expenses they may incur to repair the damage, or have the premises cleaned.

Housing Plus will carry out another inspection within two working days after the tenancy has ended. Housing Plus will tell the tenant when this is happening so that they can attend the inspection if they wish. Housing Plus will document any damage beyond fair wear and tear, and any cleaning that is required. The tenant must pay the costs to repair any damage beyond fair wear and tear, and to have the required cleaning completed.

If the tenant does not take the opportunity to attend the inspection, Housing Plus will complete the property condition report in the tenant's absence. Once the final inspection is completed, a copy of the condition report will be provided to the tenant within a reasonable timeframe.

Abandoned properties and goods

Dealing with an abandoned property

Housing Plus will consider that a tenant has abandoned a property only if it is clear that the tenant is not living there. Housing Plus usually finds out that a tenant has abandoned their property through:

- a) Neighbours advising Housing Plus that no one is living there
- b) The tenant not maintaining the property
- c) The tenant not paying rent.
- d) Goods removed eg. Fridge, washing machine, rubbish

If Housing Plus suspects a tenant has left their property without giving notice, it will inspect the property and make enquiries to find out if the tenant has abandoned it. If Housing Plus is reasonably sure the tenant has abandoned the property, it will start action to take possession of the property under Section 106 of the *Residential Tenancies Act 2010* so that it can make the property available for another client. Housing Plus has the right to seek compensation at the NSW Civil and Administrative Tribunal for loss of rental income and property damage.

Dealing with goods left on the property

If goods remain in the home two working days after the tenant has moved out, or when a property is abandoned, an officer from Housing Plus and a witness (where possible) will inspect the property. The inspection will involve:

- a) Removing and disposing of any perishable goods including foodstuffs and rubbish, and
- b) Making a detailed list of the goods left in the home and the condition of those goods and
- c) Taking photographs of the goods, particularly if they are of high value.

If in the case of goods other than personal documents, Housing Plus is required by the *Residential Tenancies Act 2010* (Section 127) to give the former tenant notice that the goods will be disposed of after 14 days. This Notice may be given in the following ways:

- a) In writing by post to the former tenant or legal representative, at the last forwarding address known to Housing Plus, or
- b) Orally in person or by telephone.

If the goods are not collected within 14 days, Housing Plus can arrange for disposal of the goods by selling them or in any other lawful manner.

Any proceeds of sale, less occupation fees and reasonable costs of sale, can be provided to the former tenant.

If an item is on hire, Housing Plus will notify the company who owns it and arrange for the company to collect it.

The former tenant can claim and collect some or all of the goods while they are in storage. Where the former tenant claims goods, they must pay an occupation fee per day for each day the goods are left on the property or in storage, which at a maximum is equivalent to the rent per day, and must not exceed, in total, the amount of rent for 14 days.

Under no circumstances will Housing Plus give or sell any goods to an employee of Housing Plus, their relatives, friends, or agents.

Where personal documents remain in the property two working days after the tenant has moved out, or when a property is abandoned, Housing Plus is required by the *Residential Tenancies Act 2010* (Section 127) to give the tenant notice that the documents will be disposed of after 90 days.

Personal documents include:

- a) a birth certificate, passport or other identity document, or
- b) bank books or other financial statements or documents, or
- c) photographs and other personal memorabilia, or
- d) licences or other documents granting authorities, rights or qualifications, or
- e) any other record, or class of record, prescribed by the regulations.

If these documents are not claimed within 90 days, Housing Plus will return personal documents to the authority that issued them or if this is not practical, dispose of them in a lawful manner that will not result in the tenant's personal information becoming publicly available.

Housing Plus can seek direction from the NCAT under the Residential Tenancies Act 2010 (section 133) if any issues arise as to the disposal of goods.

In cases where a property is abandoned due to serious illness, accident or death, Housing Plus may choose to show leniency in actioning this policy. Every effort will be made to contact and negotiate a satisfactory outcome with the client or the client's family members. If however, contact cannot be established or a mutually satisfactory agreement reached then Housing Plus may apply to the NCAT for a determination.

Any Tribunal order made following such an application will override the requirements of this policy and will be adhered to by Housing Plus.

Dealing with the tenancy accounts at the end of a tenancy

When a tenant vacates a property for any reason, they will be required to pay any outstanding charges on their tenancy accounts.

If the tenant decides to vacate:

- a) If a tenant vacates without giving sufficient notice, Housing Plus will charge rent for the full notice period or until a new tenant takes over, whichever occurs first. That is, 14 days notice for a fixed term lease or 21 days notice for a continuous lease/
- b) If the tenant fails to return the keys on a prearranged date and they return the keys at a later date, Housing Plus will charge rent to the date the tenant gives vacant possession.
- c) If a tenant abandons the property, Housing Plus will charge rent up to the date that Housing Plus obtains vacant possession of the property.
- d) In the case of National Rental Affordability Scheme Housing (Affordable Housing), if the tenant is within their fixed term when they vacate, they will be required to pay rent until a new tenant takes over, or until the fixed term period ends, whichever occurs first.

If notice is given by the landlord:

- a) If notice is given because of the end of the fixed term, the tenant will be charged rent until the end of the fixed term. In all other cases, if the tenant moves out earlier than the date specified on the Notice of Termination, rent will only be charged up to the date the tenant gives vacant possession. If the tenant moves out on or after the date specified on the Notice of Termination, Housing Plus will charge rent up to the date the tenant gives vacant possession.
- b) If Housing Plus evicts the tenant, or if the property becomes uninhabitable, Housing Plus will charge rent up to the end of the last day the tenant had possession of the property.