

Factsheet 4: High-Risk Weather Season – Tenancy

Preventative Measures

A good preventative measure is to ensure your rented home is as prepared as possible for weather emergencies, particularly if you live in a high-risk area.

Your lessor has a general obligation to ensure the premises are in a condition that is fit for habitation. However, you should also take precautions to minimise the risk of bushfire or storm damage. For example:

- you should remove flammable materials around the house
- request repairs and maintenance as necessary to ensure your home is as best equipped as possible to handle a bushfire or storm
- sweep debris and leaves
- ensure you have working hoses
- keep your lawns well maintained.

If you have any concerns about the maintenance of your rental property and how it might affect you in the high-risk weather season, you can discuss this with your lessor (preferably in writing). Make sure you keep records of this correspondence.

What to do if the property you are renting has been damaged and you cannot live there

If the property you are renting has been destroyed or damaged, it is a good idea to get legal advice.

You should, as soon as practicable, let the lessor know that the property has been damaged or destroyed.

If the property is no longer fit for human habitation, you can terminate the tenancy by giving 2 days' notice of your intention to vacate. Your lessor can also give you notice terminating the tenancy in

these circumstances, but they have to give you 1 weeks' notice.

Rent is not payable by you from the time when the property became uninhabitable. If neither you nor the lessor give notice of termination of the tenancy, rental payments resume when the property can be lived in again.

If the lessor wants to inspect the property to determine whether it is uninhabitable, they will need to arrange a time with you.

If there is a dispute as to whether the premises are fit for habitation, either party may apply for an order from the ACT Civil and Administrative Tribunal (ACAT) declaring the premises to be unfit for habitation.

What to do if you cannot access the property you live in because you have been evacuated

You may not know what the state of the property is because you cannot go back to it. In this situation, you cannot terminate your tenancy straight away.

You should contact your lessor and try to negotiate terms such as a rent reduction or complete abatement for the period that you are unable to access the property. Alternatively, you may be able to reach agreement with the lessor to terminate the tenancy.

If you want to leave your tenancy, first you need to work out if you have a 'fixed term' or 'periodic' tenancy. You are in a fixed term tenancy if you signed a lease for a fixed period (for example, 12-months). Once the fixed term period expires, a periodic lease commences automatically. If a fixed period was not specified in your tenancy agreement, you may be in a periodic tenancy.

If you wish to terminate a periodic tenancy without the lessor's agreement, you must provide at least 3 weeks' written notice to the lessor. During this time, you must keep paying rent, but you could

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potentially claim this rent back as compensation if you cannot access the property. You may need to make an application to ACAT to recover the rent you paid as compensation if the lessor does not agree to refund you these rental payments.

If you wish to end a fixed term tenancy and your tenancy agreement contains a 'break lease' clause, you can agree to pay the break lease fee and end the tenancy early.

You may also be able to apply to ACAT seeking an order terminating your fixed term tenancy on the basis that you will suffer significant hardship if the tenancy was to continue.

If you are thinking of doing any of the above, it is a good idea to get legal advice.

Repairs

The lessor has an obligation to address repairs. If the property has some damage but you still want to live in it, you need to contact the lessor as soon as possible and report any damage that has occurred.

You should work out whether urgent repairs are required. These include things such as gas leaks, burst water services, dangerous electrical faults or anything else that makes the property unsafe or unfit for habitation. These repairs need to be addressed by the lessor as soon as practicable. Failure to do so may be grounds for making a rent reduction application to ACAT.

If the lessor cannot be contacted or fails to carry out urgent repairs within a reasonable time, you may arrange for urgent repairs to be done to a maximum value of 5% of the rent of the property per annum.

For all non-urgent repairs, the lessor must make repairs within 4 weeks of you giving such notice.

Moving out temporarily

If you plan to move out temporarily because the premises are uninhabitable or repairs are being

made, you should put it in writing to the lessor and make clear your position on a rent reduction, how long you will be away from premises and who will be responsible for the possessions within the premises. Ensure you keep a record of this correspondence between yourself and your lessor.

Getting your bond back

If the property has been damaged or destroyed and you are ending your tenancy, you should be able to get your bond back. Your lessor should have lodged your bond with the ACT Office of Rental Bonds. You should lodge a return of bond form to the ACT Office of Rental Bonds and claim your bond back.

If damage to the property was caused by a bushfire or storm, the lessor cannot keep your bond money for cleaning or repairs purposes.

Claiming compensation for goods inside the property

The lessor's insurance will not cover your goods. You can insure your own goods by taking out contents insurance.

The lessor will only be liable to compensate you if the damage occurred because they did not properly maintain the property and keep it in good repair. If the damage has occurred because of circumstances outside the lessor's control, they will not be liable to pay compensation to you.

If you have any questions about the information provided in this factsheet, or you are thinking about ending your tenancy early, contact the **Tenancy Advice Service** on **1300 402 512** or by email at **TAS@legalaidact.org.au**

You can also call the **free Legal Aid Helpline** on **1300 654 314**.

This information has been updated as of November 2024.