

Tenancy: Ending a Tenancy or Breaking a Lease

COVID-19 MEASURES CEASED

The *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)* commenced on 2 September 2021 and significantly changes the responsibilities of tenants and landlords.

The post-moratorium transitional period was in effect between 26 November 2021 and 11 May 2022.

This transitional period and its measures expired on 11 May 2022. Changes under the COVID-19 Emergency Response have now ended, and the *Residential Tenancies Act 1997* is operating as normal.

When can I end my tenancy?

The law allows a tenant to leave a tenancy without breaching the tenancy agreement in various circumstances. They include:

- (a) at the end of a fixed term tenancy on giving 3 weeks' notice of intention to vacate;
- (b) any time during a periodic tenancy on giving 3 weeks' notice of intention to vacate;
- (c) if the tenant and landlord agree in writing to terminate the agreement;
- (d) if the property is not fit for habitation;
- (e) where the tenant applies to the ACT Civil and Administrative Tribunal ('ACAT') for termination on the basis of 'significant hardship' and ACAT makes a termination order;
- (f) where the landlord has intentionally or recklessly caused damage to the tenant, the tenant's family, or is likely to do so;
- (g) where the landlord has caused serious danger to the property or the tenant's belongings, or is likely to do so;

- (h) the landlord induced the tenant into signing the fixed term tenancy by a false or misleading statement;
- (i) where the tenant applies to ACAT for termination on the basis of the landlord being in breach of the tenancy agreement (and the breach is serious enough) and ACAT makes a termination order;
- (j) where the tenant is a 'protected person' under a family violence or personal protection order that prevents another tenant from being on the property and the tenant applies to ACAT for termination order and ACAT makes the order;
- (k) you are being posted away from Canberra and there is an additional clause in your lease allowing you to terminate the tenancy agreement as a result;
- (l) you are moving into a social housing property or an aged care facility;
- (m) where the landlord does not disclose an intention to sell the property to the tenant prior to the signing of the tenancy agreement and the landlord offers the property for sale within 6 months after the start of the agreement; and
- (n) where the landlord requires the tenant to permit access to property to allow inspections by a prospective buyer and the landlord makes more than one buyer inspection request and makes another inspection request 8 weeks after the first request.

Some of these grounds are explained in more detail below.

Some of these grounds require you to apply to ACAT and obtain an order terminating the tenancy agreement. If you vacate the property without following the procedure in your tenancy agreement, or without an ACAT order, you could be in breach of

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the tenancy agreement and liable for significant costs.

You should contact the **Tenancy Advice Service** on 1300 402 512 before taking any action that could terminate your tenancy during its fixed term!

Terminating a periodic tenancy

A tenant may terminate a periodic tenancy agreement by giving at least 3 weeks' written notice of an intention to vacate to their landlord (or their agent). The notice must specify the date they intend to vacate.

If you vacate without notice during a periodic tenancy, you will be liable for up to 3 weeks' rent in lieu of notice, but not for any of the costs involved in reletting the property.

When a fixed term tenancy expires, it automatically becomes a periodic tenancy.

Property no longer fit for human habitation

If at any time during the fixed term of the tenancy agreement the property becomes not fit for human habitation, a tenant can terminate the tenancy by giving just 2 days' notice of their intention to vacate.

Rent is abated for any period of time that the property is uninhabitable.

If there is a dispute as to whether the property is fit for habitation, either party may seek an order from ACAT declaring the property to be not fit for human habitation.

Landlord in breach of tenancy agreement

If the landlord breaches your tenancy agreement and the breach is serious enough, you may be able to terminate the tenancy agreement. There are two

ways to terminate a tenancy agreement on a serious breach by your landlord.

First, you can apply to ACAT detailing the serious breach by the landlord and requesting ACAT terminate the tenancy agreement. If the breach is serious enough, ACAT may terminate the tenancy. However, ACAT may also order that the tenancy continue and that the landlord remedy their breach.

Second, you can issue the landlord with a signed and dated 14 day 'Notice to Remedy' detailing the breach and requesting the lessor remedy it within the 14 day period. If the landlord remedies the breach within the 14 day period, the tenancy will continue. If the landlord does not remedy the breach, or if the breach is simply not capable of being remedied, you can then issue a signed and dated 14 day 'Notice of Intention to Vacate'.

Upon receiving the 'Notice of Intention to Vacate', the landlord has only two options: they can either accept the notice and accept that the tenancy will terminate on the date nominated by you, or they can apply to ACAT asking for an order that the tenancy continue, that they receive compensation or both.

A 'Notice of Intention to Vacate' following a 'Notice to Remedy' does not protect you from liability for compensation if ACAT ultimately determines that the breach was not serious enough to justify terminating the tenancy, or the breach did not occur.

Moving into social housing or an aged care facility

You can end your fixed-term tenancy in order to transition into social housing or an aged care facility without being liable to pay your landlord or their agent any amount of compensation. You must show your landlord or their agent that you have accepted an offer to move into social housing or an aged care facility. You must also provide your landlord or their agent with two weeks' written notice of your intention to end the tenancy. You will be required to

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pay rent in accordance with your tenancy agreement for the duration of the notice period. You will remain liable to pay any rent arrears or property damage debt that arose during the course of the tenancy.

The property is to be sold during the tenancy agreement

If you enter a fixed term tenancy agreement with a landlord and the landlord offers the property for sale within the first 6 months of your agreement, you may by written notice terminate the agreement if the landlord failed to disclose the intended sale of the property before entering into the agreement.

You may also end the tenancy agreement if the landlord requires you to permit access to allow inspections for the sale of the property (called a 'buyer inspection request') and:

1. the landlord makes more than 1 buyer inspection request; and
2. a subsequent buyer inspection request is made more than 8 weeks after the day the landlord made the first buyer inspection request.

You are required to give the landlord at least 14 days' notice and you are not liable to pay compensation for early termination.

Terminating an agreement on the basis of family violence and protection order

If the Magistrates Court has made a protection order and if both the applicant (protected person) and respondent under the order are parties to the residential tenancy agreement (this includes if the applicant has been living in the property as the protected person's home but is not a party to the agreement), the protected person may apply to the ACAT for an order terminating the residential

tenancy agreement if the order prevents the respondent from being within a particular distance from the protected person or the respondent gives an undertaking to leave the property.

The protected person may also apply to ACAT to terminate the current agreement and either require the landlord of the property enter into a new residential tenancy agreement with the protected person or grant vacant possession of the property to the landlord.

In doing so, the protected person may apply to ACAT to end the tenancy agreement. However, if the ACAT is to make an order in relation to the above, it must be satisfied that making such an order would be reasonable, taking into account the length of time remaining on the term of the existing tenancy agreement and taking into consideration the interests of the protected person, the respondent and any other tenants and in particular whether the other tenants support the protected person's application.

For further information, please refer to our **Tenancy, Family and Personal Violence** fact sheet.

No grounds for terminating a fixed term tenancy agreement

Leaving a fixed term tenancy agreement without a legal basis for doing so is known as "breaking the lease". In essence you are breaching your obligations under the tenancy agreement.

ACT tenancy laws allow tenancy agreements to contain 'break lease clauses'.

If a tenancy agreement has a break lease clause, it must conform to the wording of the break lease clause in the *Residential Tenancies Act 1997* (ACT). This clause provides a cap on the amount of compensation you must pay to the landlord if you break your lease early. For a fixed term tenancy

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under 3 years in duration, this amount is capped at 6 weeks' rent if you are still in the first half of your tenancy, or 4 weeks' rent if you are in the second half of your tenancy. This amount can be reduced if the landlord is able to find a new tenant soon after you vacate the property.

If you do not have a break lease clause in your tenancy agreement, then you are required to pay rent until a new tenant is found. This compensation amount cannot exceed the remainder of your tenancy agreement or 25 weeks' rent, whichever is less. You could also be liable to the landlord for 1 weeks' rent to cover administrative costs (e.g. advertising) in re-letting the property.

However, whether there is a break lease clause or not, once you break the lease the landlord has a general duty to mitigate their losses. This means that once you give notice to your landlord or their agent that you will be breaking the lease, they need to act promptly to re-advertise the property and reasonably consider all new applicants.

You should also be required to provide reasonable assistance to the landlord or their agent by making the property available for new tenants to inspect.

If you have any questions arising out of the information provided in this fact sheet, or you are thinking about ending your tenancy early, contact the **Tenancy Advice Service** at:
1300 402 512 or TAS@legalaidact.org.au

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