

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.

First, you need to determine whether you are in a fixed term or a periodic tenancy. You are in a fixed term tenancy if you signed a lease for a fixed period (e.g. 12-month fixed term lease). Once the fixed term period expires, periodic lease commences automatically. If a fixed period was not specified in your tenancy agreement, you may be in a periodic tenancy.

Termination grounds for both fixed term and periodic tenancies

By consent

You may terminate your tenancy if you and your landlord both agree for the tenancy to be terminated, without any break lease penalty, on an agreed date. You should ensure that the agreement (to terminate) is in writing.

Landlord in breach of the tenancy agreement

If the landlord breaches the 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 based on a serious breach by your landlord.

You can apply to ACAT detailing the serious breach by the landlord and requesting orders from ACAT to terminate the tenancy agreement. If the breach is serious enough, ACAT may terminate the tenancy. However, ACAT may also order that the tenancy continues and that the landlord remedy their breach.

Alternatively, you can issue the landlord with a signed and dated 14 day 'Notice to Remedy' detailing the breach and requesting the landlord remedy that breach 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 continues, that they receive compensation, or both.

A 'Notice of Intention to Vacate' following a 'Notice to Remedy' (particularly in fixed term tenancies) 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.

Damage or injury

In circumstances where the landlord intentionally or recklessly caused or permitted:

- Serious danger to the premises or to your property; or
- Injury to you or a member of your family.

You can apply to ACAT for an order terminating the tenancy. In serious cases, ACAT may immediately terminate the residential tenancy agreement.

False or misleading statement

If the tenancy agreement was induced by a false or misleading statement of the landlord or by the landlord's agent, you can apply to ACAT for an order terminating the

Tenancy: Ending a Tenancy or Breaking a Lease

tenancy. A statement can be false or misleading by virtue of omission to include a relevant fact.

Threats, harassment, intimidation or abuse

If you believe that the landlord has engaged in any conduct that is threatening, intimidating, harassing or abusive (prohibited conduct) towards you or a related person (another person residing at the premises or your family member), you may apply to ACAT for an order terminating the tenancy agreement.

No later than 7 days after making the ACAT application, you must give the landlord written notice detailing the prohibited conduct.

Among other things, ACAT will consider the nature, frequency and duration of the prohibited conduct, the circumstances, any family violence order or protection order made against the landlord, whether the conduct is likely to continue, whether the landlord has stopped the conduct or agreed to stop the conduct or is reasonably likely to stop the conduct and the effect of the conduct on the tenants.

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 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.

Property no longer fit for human habitation

If at any time during the tenancy 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.

"Not fit for habitation" is often very difficult for tenants to prove. You should seek legal advice if your landlord is disputing the habitability of the property.

Excessive rent increase

If you receive a rent increase notice and the proposed rent increase is excessive (a rent increase can be excessive if it is above the prescribed amount), you can give the landlord 3 weeks' notice to vacate. However, this must be done prior to the rent increase taking effect.

You should seek legal advice if you are in a fixed term tenancy and the landlord is proposing an excessive rent increase during the fixed term. For further information, please refer to our factsheet – Rent Increases.

Premises not complying with the minimum housing standards

Landlords are required to ensure that the property comply with the minimum housing standards as prescribed and updated by the regulations from time to time.

If you think the premises you are living in do not meet the minimum housing standards, you can apply to ACAT to seek a termination of the tenancy agreement or a rent reduction.

It is important to note that not meeting the minimum housing standards alone does not necessarily mean that the premises are "not fit for habitation".

For further information, please refer to our factsheet regarding the current minimum housing standards.

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 live at the property (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

Tenancy: Ending a Tenancy or Breaking a Lease

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.

Termination grounds for fixed term tenancies only

Termination at the end of the fixed term lease

If you want to end the tenancy on the date the fixed term period expires, you need to give your landlord not less than 3 weeks' notice that you intend to vacate the property on the date the fixed term lease expires. The notice must specify the date you intend to vacate.

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 if the landlord offers the property for sale and 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.

In some instances, your landlord may notify you of their intention to sell the property. This may be different from offering the premises for sale.

Significant hardship

If you suffer significant hardship in continuing your tenancy, you may apply to ACAT for an order terminating the tenancy agreement. There can be many types of hardship a tenant may face in continuing a tenancy. You should seek legal advice if you have any concerns.

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 fixed term tenancy agreement upon no grounds

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

Tenancy: Ending a Tenancy or Breaking a Lease

landlord if you break your lease early. For a fixed term tenancy 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 are required to provide reasonable assistance to the landlord or their agent by making the property available for new tenants to inspect.

For periodic tenancies

In a periodic tenancy, you can give your landlord 3 weeks' notice to vacate at any time without any reason. The notice must specify the date you intend to vacate. You may pay 3 weeks' rent in lieu of notice, but not for any of the costs involved in reletting the property.

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** on 1300 402 512 or TAS@legalaidact.org.au

Tenancy: Ending a Tenancy or Breaking a Lease

Grounds for termination	Steps to be taken
Ending a fixed term or periodic tenancy by consent	<p>Negotiate with your landlord</p> <p>Reach an agreement</p> <p>Ensure that the agreement to terminate is in writing</p>
Breach of the tenancy agreement by the landlord	<p>Identify the breach in the Standard Residential Tenancy Term or other terms in your tenancy agreement</p> <p>Consider whether the breach is serious and whether the landlord is capable of or willing to rectify the breach</p> <p>Either give the landlord 2 weeks' notice to remedy followed by 2 weeks' notice to vacate, or apply to ACAT.</p>
Damage or injury or intention to damage or injure	<p>Consider the following questions :</p> <ol style="list-style-type: none"> Did your landlord cause or permit serious danger to your home or property, or injury to you or your family members? Was it intentional or reckless? <p>Apply to ACAT</p>
False or misleading statement	<p>Consider the following questions:</p> <ol style="list-style-type: none"> What was the false or misleading statement? Did you enquire about specific things at the premises and the landlord failed to mention a relevant fact? Did you rely on this statement? Would you have entered into the tenancy agreement had you been notified of the relevant fact? <p>Apply to ACAT</p>
Threats, harassment, intimidating or abuse	<p>Consider the following questions:</p> <ol style="list-style-type: none"> Is your landlord engaging in conduct that is threatening, harassing, intimidating or abusive towards you or another person living in the house? How frequent does this occur?

Tenancy: Ending a Tenancy or Breaking a Lease

	<ul style="list-style-type: none"> c. How long has this been ongoing? d. How has this affected you? <p>Apply to ACAT</p> <p>Within 7 days of applying to ACAT, give your landlord written notice detailing the conduct in concerned.</p>
Moving into aged care or social housing	<p>Gather supporting documents</p> <p>Give the landlord at least 14 days' written notice along with your supporting documents.</p>
Premises are not fit for habitation	<p>Consider the following questions:</p> <ul style="list-style-type: none"> a. Do you have evidence to prove that the premises are unliveable? b. Is there a serious health and safety risk? c. Is there a lack of basic amenities at the premises? d. Is the landlord disputing the habitability of the premises? e. Are issues with the premises capable of being fixed? <p>Give the landlord 2 days' written notice to vacate</p>
Excessive rent increase	<p>Consider the following questions:</p> <ul style="list-style-type: none"> a. Are you in a fixed term lease? b. If the rent increase takes effect during the fixed term, is there a clause in your agreement that stipulates the amount of the rent increase or a method for working it out? c. Why do you think that the increase is excessive? d. Is the rent increase above or below the prescribed amount? <p>Give the landlord 3 weeks' notice to vacate</p>
Failing to comply with the Minimum Housing Standards	<p>Consider the following questions:</p> <ul style="list-style-type: none"> a. What is the relevant standard? b. What is the compliance date required in the legislation? c. Was a statement given by the landlord regarding compliance with the Minimum Housing Standards? d. Have you requested more information from the landlord?

Tenancy: Ending a Tenancy or Breaking a Lease

	<p>e. Did you allow the landlord to access the property to ensure compliance with the Minimum Housing Standards?</p> <p>Apply to ACAT</p>
Termination at the end of the fixed term	Give the landlord at least 3 weeks' written notice that you intend to vacate the property on the date that the fixed term lease expires.
The premises is being offered for sale	<p>Consider the following questions:</p> <ul style="list-style-type: none"> a. Is the premises being offered for sale? b. Is it within 6 months since the start of your fixed term tenancy? c. How many inspection requests has the landlord made? d. Is a subsequent buyer inspection request made more than 8 weeks after the day the landlord made the first request? <p>Give the landlord at least 14 days' written notice</p>
Significant hardship	<p>Consider the hardship to you if the tenancy agreement were to continue (e.g. when and why did the hardship arise during the fixed term lease?)</p> <p>Apply to ACAT</p>
Periodic tenancy	Give the landlord 3 weeks' notice of the date you intend to vacate the premises

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