

# FACT SHEET

## Terminating a Tenancy Agreement

Residential tenancy agreements can only be terminated in accordance with the *Residential Tenancies Act 1994*.

### Terminating a tenancy

Tenancy agreements can generally only be ended if:

- the lessor/agent and tenant both agree, in writing, for the tenancy to end,
- the lessor/agent gives a *Notice to Leave* (Form 12) or *Abandonment Termination Notice* (Form 15) to the tenant,
- the tenant gives the lessor/agent a *Notice of Intention to Leave* (Form 13), or
- the Small Claims Tribunal makes an order terminating the agreement.

A fixed term agreement must be formally terminated by the tenant or lessor/agent, otherwise the tenancy will continue as a written periodic agreement (unless another fixed term agreement has been signed).

### Terminating a tenancy for a breach

If one party breaches the terms of the tenancy agreement or the Act, the other party can issue a *Notice to Remedy Breach* (Form 11) requiring remedy of breach within a minimum of at least 7 days (5 days for rent arrears in moveable dwellings). If the breach is rent arrears, the rent must be 7 days in arrears before the *Notice to Remedy Breach* can be issued.

If they fail to remedy the breach within that period and it is a serious enough breach, the agreement may be terminated. A tenant who wants to terminate must give a *Notice of Intention to Leave* (Form 13). A lessor/agent who wants to terminate must give a *Notice to Leave* (Form 12).

If the breach is the tenant's failure to pay rent, the handover day must be at least 7 days after the *Notice to Leave* is given. For general breaches by tenants, the handover day must be at least 14 days after the notice was given. For general breaches by lessors/agents, the handover day must be at least 7 days after the notice was given.

There are two options if the breach is remedied after the remedy period but before the termination notice

has expired. The breach can be:

- tolerated and parties continue with the tenancy, or
- treated as grounds for terminating the tenancy at the end of the notice period.

A tenant may withdraw a *Notice of Intention to Leave* after it has been served, but only if it is withdrawn before the handover day and with the written agreement of the lessor/agent. A lessor can also withdraw a *Notice to Leave* before the handover day with the tenant's written agreement.

Where a tenant breaches the agreement or is given a termination notice by the lessor/agent, the tenant is still responsible for the payment of rent. This is subject to the lessor's duty to mitigate loss. The demand for rent payable does not affect the lessor/agent's right to pursue the tenant for breach of the tenancy agreement, nor does it constitute a new tenancy agreement between the parties.

Tenants and lessors/agents may make an urgent application to the Small Claims Tribunal for a termination order where the other party has repeated the same serious breach more than twice in a two year period even though they may have remedied the breach each time.

### Disputes

The RTA encourages tenants, lessors and agents to attempt to resolve disputes about the termination of tenancy agreements themselves by talking to each other and finding out information about their rights and responsibilities.

Where a tenant, lessor or agent has received a *Notice to Remedy Breach*, a *Notice of Intention to Leave* or a *Notice to Leave* and they cannot reach agreement about the grounds for the notice, they can lodge a *Dispute Resolution Request* (Form 16) with the RTA's Dispute Resolution Service.

The parties will need to attempt to resolve the dispute by lodging a *Dispute Resolution Request* with the RTA before applying to the Small Claims Tribunal for a hearing unless the application is part of an urgent application under the Act.

## **Reasons for terminating an agreement**

**Without Ground:** a periodic tenancy agreement can be terminated by the tenant without ground (giving reasons) by giving two weeks notice, and by the lessor/agent by giving two months' notice.

A fixed term agreement can be terminated by the lessor/agent or tenant without ground at the end of the term, and the handover day is to be 14 days after the notice was given or the day the term of the agreement ends (whichever is the later).

**Non-livability:** either party can terminate the agreement if the premises are partly or wholly destroyed (except if the damage was caused by a breach of the agreement), or can no longer be used legally as a dwelling. The notice to leave the premises must be given within one month of the premises becoming uninhabitable. The notice may be effective at the same time it is given.

**Hardship:** where a tenant or lessor finds they would suffer excessive hardship if a tenancy agreement was not terminated, the parties should try to negotiate. They both also have the option of applying directly to the Tribunal to terminate the agreement.

**Damage or injury:** the tenancy agreement may be terminated by the Small Claims Tribunal, following an application by the lessor/agent, if it believes the tenant has caused or will cause damage or injury to either the premises or other people (including neighbours and their property). See the *RTA's Domestic Violence* Fact Sheet for more information.

A tenant may apply to the Tribunal for an order to terminate the tenancy agreement against a lessor/agent who has caused serious damage to the tenant's possessions or has threatened or abused the tenant or another person occupying or allowed on the premises.

**Objectionable behaviour:** the tenancy agreement may be terminated if the Tribunal is satisfied the tenant has verbally abused, harassed or intimidated the lessor/agent; or has caused, or is causing, a serious nuisance to neighbours. Tenants may apply to the Tribunal to terminate a tenancy agreement if the lessor/agent has intimidated or verbally abused the tenant or anyone else allowed on the premises.

**Employment terminated:** Subject to any relevant industrial award or agreement, a tenancy that arises under the tenant's terms of employment may be

terminated by the lessor giving four weeks' notice if the tenant's employment ends.

**Abandoned premises:** a lessor/agent who believes on reasonable grounds the premises have been abandoned can give a notice to the tenant to terminate the tenancy agreement by sending it to the tenants' address for service of notices. Alternatively, the lessor/agent may apply to the Small Claims Tribunal for an Abandonment Termination Order. See the *Abandoned Premises* Fact Sheet for more information.

**Sale of premises:** A periodic tenancy may be terminated by the lessor with four weeks' notice because the lessor has entered into a contract to sell the premises with vacant possession. However, a fixed term tenancy cannot be terminated on these grounds before it is due to end, except by mutual agreement between the tenant and the lessor.

## **Retaliatory termination prohibited**

A tenant may apply to the Small Claims Tribunal to set aside a *Notice to Leave* (Form 12) given by a lessor/agent without grounds, where the tenant reasonably believes the notice was given in retaliation for the tenant exercising their lawful rights. The application must be commenced within four weeks of the notice being given.

## **Compensation**

A person may apply to the Small Claims Tribunal for compensation to cover damage or loss, including loss of rent or damage to property, caused by the other party breaching the terms of the tenancy agreement. All persons seeking compensation must take steps to avoid or minimise their own loss. An application to the Tribunal about a breach seeking compensation or another order can be made within six months of becoming aware of the breach occurring. The parties will usually have to attempt resolution through the RTA's Dispute Resolution Service before applying to the Small Claims Tribunal.

## **Further information**

The *Residential Tenancies Act 1994* is the primary source material on the law and takes precedence over this Fact Sheet should there be any inconsistency between the Act and this Fact Sheet. For more information about the *Residential Tenancies Act 1994*, contact the Residential Tenancies Authority. Contact details are at the bottom of this Fact Sheet.

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