

Ending A Tenancy Policy

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1 Purpose and Applicability

This policy explains how a tenant or the Women's Housing Company (WHC) will terminate a tenancy, including:

- Grounds for termination; and
- Notice period of intention to terminate or vacate.

The policy sets the minimum requirements of tenants and minimum obligations of WHC. For tenants in difficult circumstances, staff of the WHC will apply compassion in the enforcement of policies and will provide fairness in all decision making.

This policy applies to all transitional, social and affordable housing programs managed by WHC, but not to crisis accommodation.

2 References

2.1 External or Statutory Requirements

- Housing Act 2001
- NSW Residential Tenancies Act 2010
- Housing Pathways Policies (DCJ)
- NSW Affordable Housing Ministerial Guidelines

2.2 Internal Requirements, Procedures and Forms

- [Eligibility and Applications Policy](#)
- [Starting a Tenancy Policy](#)
- [Keeping a Tenancy Policy](#)
- [Complaints and Appeals Policy](#)
- [Privacy Policy](#)

2.3 Definitions

The following terms are used in this document, with specific meaning:

- a) “must” or “shall” or “will” designates a mandatory requirement or action
- b) “may” is an acceptable action or requirement but not mandatory
- c) “Pathways” means “Housing Pathways” which is the system for applying for social housing in NSW. Applicants fill out a single application form for assistance from either DCJ or participating community housing providers such as the WHC. Housing Pathways also maintains a single register of eligible applicants for social housing in NSW.
- d) “social housing” is subsidised rental accommodation for people on very low or low incomes who meet the eligibility requirements. Eligibility requirements for all social housing tenants are as set out under Housing Pathways.
- e) “affordable housing” is subsidised rental accommodation for very low, low or moderate income tenants and in NSW is managed in accordance with the [NSW Affordable Housing Ministerial Guidelines](#).
- f) “transitional housing” is short-term accommodation with access to support services for people who are homeless or at risk of homelessness.
- g) “tenancy agreement” or “rental lease” or “lease” is the written agreement between the WHC and the tenant with all terms and conditions of the tenancy.
- h) “periodic agreement” or “continuous lease” means a tenancy agreement where there is no fixed date of termination, ie the tenant is able to remain in the property indefinitely, unless the WHC has grounds for termination.
- i) “subsidised rent” is the term in WHC rent statements that describes the rent that is payable by the tenant. In this document “rent” is used to mean “subsidised rent”.
- j) “head leased property” refers to a property where WHC has rented it from the owner, usually from the private market, and then leases the property to the tenant. Bonds and rents are payable by the tenant to the WHC.
- k) “The Tribunal” means the NSW Civil and Administrative Tribunal (NCAT), is the independent body which deals with disputes between landlords and tenants.
- l) “Specific Performance Order” (SPO) is an order made by NCAT that enforces the tenant to pay rent on time

3 Requirements

3.1 General

The Residential Tenancies Act 2010 (RTA) provides the legislative framework in relation to terminating tenancies and the rights and obligations of tenants and the Women's Housing Company (WHC). The RTA also specifies that as a social housing agency, the WHC may terminate tenancies in cases where the tenant no longer satisfies eligibility requirements.

The NSW Office of Fair Trading website <https://www.fairtrading.nsw.gov.au/> has fact sheets about the requirements for the termination of lease agreements.

3.2 Tenant Initiated Termination

In general, all tenants are required to give the WHC 21 days written notice of their intention to vacate a property, regardless of the type or length of lease. Reduced notice periods can be considered in the following cases:

- the tenant is a transitional housing or a Connect 100 tenant
- the tenant is moving to another social housing property (including to another social housing landlord)
- the tenant needs to move as a result of domestic violence or family violence, or as a result of a similar situation that places them at risk of harm
- the tenant needs to move to a care facility.

All tenants are required to continue to pay rent until the end of the notice period. If a tenant vacates the property and returns the key before the end of the notice period, and a new tenant can commence the tenancy during the notice period, the departing tenant is entitled to a refund of any rent paid for the period after the new lease agreement starts.

The WHC will conduct a final property inspection as soon as practical after the former tenant returns the keys or on the last day of the notice period. The former tenant is welcome to attend this inspection.

3.3 Landlord initiated termination

The WHC can initiate the termination of a tenancy agreement for any of the following reasons:

- it is the end of the lease for a head-leased property
- a tenant is found to have broken the terms and conditions of the Residential Tenancy Agreement
- a tenant is no longer eligible for the housing program they are housed under
- death of a tenant

- a tenant is no longer residing in the property, through having moved to another residential facility for more than 12 weeks, or having abandoned the property
- the tenant has rejected an alternative offer of social housing and is required to vacate the current premises for WHC management purposes.

All action to terminate a tenancy by the WHC is carried out with regard to procedural fairness, taking into consideration the circumstances of the tenant and in accordance with relevant legislation and required notice periods.

3.3.1 Termination of a head-leased property

In instances where the WHC is head leasing a property, then the WHC is limited by the minimum notice period that the landlord has given the WHC, which is usually 30 days' notice, but can be as little as 14 days' notice.

In these cases, the WHC will seek to rehouse tenants into an alternative social housing property before the notice expires. The WHC will work with the tenants to locate a suitable alternative property. In these circumstances only one alternative offer will usually be made due to time constraints in returning to property to the owner.

3.3.2 Termination due to breach of the Residential Tenancy Agreement

Termination and eviction is always considered as a last resort for WHC in relation to a breach of the tenancy agreement. WHC may seek termination of the lease through the NSW Civil and Administrative Tribunal (NCAT) where a tenant has engaged in behaviour that is in breach of the terms of the tenancy agreement, such as:

- Persistent nuisance and annoyance affecting neighbours and/or WHC staff, contractors and the staff or organisations that WHC has support partnerships with
- Continued non-payment of rent and water charges
- Continued living in cluttered or unsanitary conditions that pose a health threat to neighbours
- Unapproved pets or occupants in the property
- Sub-letting of the premises
- Unauthorised occupants residing at the property
- Illegal conduct being carried out in, or on, the premises

In general, the WHC will work with a tenant to resolve any breach and allow them time to show that they can rectify the situation. If the tenant does not rectify the breach then the WHC will:

- 1) Issue a notice of termination to the tenant that will specify a date to vacate - if the tenant rectifies the issue before the date to vacate, then the notice of termination will be withdrawn

- 2) If the tenant does not rectify the issue by the date to vacate, then WHC will apply to the NSW Civil and Administrative Tribunal (NCAT) for a possession order. NCAT can then grant a possession order and set a date for termination and possession
- 3) If the tenant does not vacate by the date set by NCAT then WHC can apply for a warrant of possession from NCAT for a Sheriff to enforce and locks on the property may be changed at this stage.

Where a tenant's anti-social behaviour is seen to be as a result of mental health issues, the WHC will refer them to a support or health agency for assessment and care. The WHC will continue to provide the tenant with stable and secure housing whilst they receive medical care. However, if their anti-social behaviour becomes a criminal matter or poses a threat to the safety of others, the WHC may seek termination of the lease.

Where the WHC suspects that a tenant is sub-letting the premises, the tenant's subsidised rent will be terminated and market rent will be applied and charged until such time that an investigation is completed. On substantiation of the sub-letting, the WHC will apply to NCAT for termination and possession and an order for repayment of rental arrears. If the sub-letting is not substantiated then the tenant will be repaid the additional amount of rent collected as a result of cancellation of the rent subsidy.

Where the WHC suspects that an unauthorised additional occupant is residing at the premises, an investigation will be conducted. If the allegation is proven, the rental subsidy will be cancelled for the period that the unauthorised additional occupant resided at the premises.

Where the WHC suspects that illegal activity is being conducted in the property, WHC will refer the matter to the Police and may seek immediate termination of the lease through the NSW Civil and Administrative Tribunal (NCAT).

3.3.3 Termination due to program ineligibility

The WHC housing programs have specific eligibility requirements and the WHC reserves the right to terminate a lease when the tenant is no longer eligible under the program requirements. This relates to all transitional housing programs.

3.3.4 Where a tenant's income exceeds the maximum income allowable under an affordable housing program

If a tenant earns above the specified income limit for an affordable housing property they may have to vacate the property. However, there is a period of up to 12 months before the tenant will need to vacate and during this time the WHC will discuss alternative housing options with the tenant. Refer to the WHC's Keeping a Tenancy policy for further details.

3.3.5 Where a tenant's income does not meet minimum eligibility requirements

Where a tenant's income has reduced and they no longer meet the income threshold for an affordable housing property, the WHC will discuss the options available to the tenant, including

alternative housing options and their eligibility for a management transfer. The WHC will assist the tenant as much as possible and will also refer the tenant to other agencies as appropriate.

3.3.6 Termination due to the death of a tenant

When the WHC is advised of the death of a tenant, a 14 day notice of termination will be issued to the executor of the tenant's estate. The executor will be required to remove all possessions and return the keys to the property to the WHC within 14 days. Where the executor fails to do this, the WHC will seek an order from NCAT for permission to remove all furniture and personal effects.

All furniture and household effects will be disposed of and any personal papers and memorabilia will be sent to the executor, in accordance with section 3.4 below, Abandoned Goods. Any portion of the tenant's bond that is not claimed by the WHC will be returned to the tenant's estate.

3.3.7 Termination due to abandoned premises

Where the WHC suspects that a property has been abandoned as a result of:

- Advice from neighbours that a tenant has not been seen for at least 30 days
- Failure by the tenant to pay rent for at least 30 days, or rent arrears in excess of 30 days
- The WHC being unable to contact the tenant after repeated attempts
- The WHC being unable to establish the tenant's whereabouts through contact with next of kin, their emergency contact, or their support agency/ies
- The WHC being unable to establish contact with the tenant after consultation with the Police or other authorities

The WHC will seek termination of the tenancy agreement and seek possession of the property through the NSW Civil and Administrative Tribunal (NCAT). When granted possession, the WHC will enter the premises, take an inventory of contents, post a 14 day notice of termination to the tenant at the premises, and send a copy to their next of kin, if they are known to the WHC. WHC will allow their next of kin access to the property to remove all household effects.

If the next of kin does not remove the household and personal items from the property, then The WHC will dispose of all items as per section 3.4 below, Abandoned Goods.

3.3.8 Termination due to rejection of alternative offer of social housing

In the event that the WHC requires a social housing property back for management purposes, including but not limited to property sale, property redevelopment or major repair works, the WHC will work with the tenant to relocate them to a suitable alternative property.

In the event that a tenant does not accept an alternative offer of housing, the WHC may terminate their tenancy through NCAT under section 148 of the Residential Tenancies Act 2010. In such an event, the WHC will follow the legislated timeframes.

3.3.9 Change in Household Composition

The WHC houses single women and women with children. Tenants' life choices may change and as a result their household composition may change, such as entering into a relationship or family reunion. If the WHC becomes aware that there are additional permanent occupants in the property, the WHC will work with the tenant to apply for a transfer to a suitable property, program or seek alternative housing options, dependent on the tenant's ongoing eligibility for social housing. For the period that there are additional occupants in the property, the income of these occupants will also be included in the household's rent calculation.

3.4 Abandoned Goods

Where a tenant has vacated a property but left goods in it, or abandoned the property, and the NSW Civil and Administrative Tribunal (NCAT) has granted a possession order to WHC, every attempt will be made by the WHC to advise the tenant or their next of kin that they need to collect any goods and personal effects left in the property.

However, the WHC cannot leave properties vacant for extended periods of time and will dispose of abandoned household items after the legal minimum of 14 days' notice has passed. During this 14 day period, the WHC may also change the locks on the property. All furniture and clothing will be disposed of or donated to charity.

The WHC will take an inventory of contents, note which items are being disposed of, and send reasonable amounts of personal papers and memorabilia to the tenant's next of kin, if they are known to the WHC. If the tenant's next of kin is unknown or does not respond, then WHC will retain the personal items under secure conditions for 90 days. The WHC may agree to extend this beyond the 90 days if the tenant, executor, or next of kin requests it. Any pets found at the property will be left with the RSPCA or other animal shelter.

The WHC is entitled to cover all of the costs of cleaning the property and packing up and disposing of all goods in the property from the tenant's bond.

3.5 Final Property Inspection

All lease terminations require a final property inspection. The Property Condition Report that was completed at the start of a tenancy will be updated in relation to the condition of the property at the end of the tenancy. The tenant will always be invited to attend the property inspection which will occur as soon as possible after the last day of the lease period or when keys are returned.

Allowing for normal wear and tear the tenant will be held liable for any damage or non-approved modifications made to the premises and they may lose a portion of bond that is required to rectify the modification or damage.

Where a property owner that the WHC is leasing a property from has determined that the property has incurred damage other than normal wear and tear and has levied a claim against the bond, this charge will be claimed against the tenant's bond held by the WHC.

Where the tenant has rent or other charges owing on the property, the WHC will claim against the bond for the outstanding amount.

All returned bonds will be forwarded directly to the tenant from the Rental Bond Board at the advised tenant's forwarding address.

3.6 Moving to another WHC Property

When a tenant moves from one WHC home to another under a management transfer, the WHC may transfer the bond from one property to the other. A final property inspection will occur in accordance with this policy, and the balance of the bond after any claim has been lodged will be transferred to the new property. Refer to the WHC's Keeping a Tenancy Policy.

3.7 Outstanding Debts

The costs associated with property damage, outstanding debts and rent arrears will be charged against any bond held by the NSW Rental Bond Board. Should the tenant's bond be insufficient to cover the outstanding charge, then WHC will invoice the tenant with the amount to be paid within 14 days of their termination date. Any unpaid amount may be pursued through the NSW Civil and Administrative Tribunal.

4 Complaints and Appeals

4.1 Complaints

Applicants and tenants that have received a service from the WHC can lodge a complaint about that service if they do not think that the WHC has followed its own policies or met its published standards. WHC staff can assist applicants and tenants to make a complaint about the service and stakeholders and community organisations can also lodge complaints.

The WHC will manage all complaints in a fair and transparent way to ensure that the organisation's service delivery is responsive to concerns raised by tenants.

All complainants will receive a written response from the WHC about the outcome of the investigation of their complaint within 21 working days. For further information see the Complaints and Appeals Policy.

4.2 Appeals

If an applicant or tenant does not agree with a decision made by WHC, or thinks that the decision is unfair, then they can lodge an appeal against that decision. The basis of an appeal may include any of the following reasons:

- Inadequate consideration was given to their individual circumstance
- The decision involved an inadequate interpretation of WHC policy
- The decision was made contrary to WHC policy

- The procedure used to reach the decision was not fair and correct.

All appeals should be made to the WHC in writing. The WHC will then review the decision and will inform the applicant or tenant in writing about the outcome of the review within 21 days of receiving the appeal.

If the applicant or tenant does not agree with the outcome of the WHC's review they can then lodge a second tier appeal to the Housing Appeals Committee (HAC). HAC can consider appeals about decisions made by the WHC in relation to its own services or policies.

For more detailed information about how the WHC manages appeals, see the WHC Complaints and Appeals Policy.

5 Privacy and Confidentiality Statement

The Women's Housing Company will ensure that all applicant and tenant information is kept confidential and is managed and protected in accordance with the WHC Privacy Policy and relevant privacy law.

From time to time, de-identified demographic information may be released to third parties for statistical purposes only.