

Government Employee Housing Tenancy Agreement Breach

Policy

Document title	Government Employee Housing Tenancy Agreement Breach	Version 1.1
Contact details	Northern Territory Government Employee Housing Office	
Approved by	Senior Executive Group on behalf of Executive Leadership Board	
Date approved	13/12/2022	
Document review	24 months from date of approval	
TRM number	HCD2022/06748-1	

Version	Date	Author	Changes made
1.1	8/5/2025	NTGEHO	MOG Change - Name update
1.0	13/12/2022	NTGEHO	First version

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1. Policy statement

The Chief Executive Officer (CEO) (Housing) may give notice, under the *Residential Tenancies Act 1999*, for a breach to the Government Employee Housing (GEH) tenancy agreement. It is CEO (Housing)'s preference that any breach of a tenancy agreement be remedied so that the tenancy can continue for services in the communities can remain uninterrupted.

2. Purpose

This policy outlines CEO (Housing)'s approach to breaches of GEH tenancy agreements.

3. Scope

This policy applies to all breaches of a GEH tenancy agreement. This policy may not apply if the action was not a breach of the tenancy agreement, such as a one-off complaint or an instance of behaviour not covered by the tenancy agreement.

4. Policy detail

Any breach of a GEH tenancy agreement condition or part of the *Residential Tenancies Act 1999* can result in termination of the tenancy. However, CEO (Housing) treats some breaches as less serious and will only seek termination for a breach where the tenant has seriously or repeatedly breached the terms of the tenancy agreement. Breaches such as the use of illegal drugs on the premises or extensive damage to the premises are considered serious and are more likely to result in immediate termination.

Some serious breaches will be taken directly to the police or to the local courts, which can halt CEO (Housing)'s termination process until the matter is finalised by the authorities.

Under the *Residential Tenancies Act 1999*, CEO (Housing) may give the tenant a notice of intention to terminate the tenancy for a breach. This is in addition to any warning letters or notifications which are communicated with the tenant. For a notice to be withdrawn, both CEO (Housing) and the tenant must sign a document stating that the notice has been withdrawn.

4.1. Cleanliness and damage

Tenants have a responsibility under section 51 of the *Residential Tenancies Act 1999* to not maintain the premises in an unreasonably dirty condition, allowing for reasonable wear and tear; and to not intentionally or negligently damage the premises, ancillary property or common property in unit complexes.

When a breach of the tenancy agreement in relation to cleanliness is identified through an inspection or external observation, the tenant will be notified of the requirement to remedy the breach. If the breach is not remedied, CEO (Housing) may seek termination of the tenancy.

Tenant damage is considered to be any intentional or negligent damage caused or permitted to the premises, ancillary property or common property by the tenant, a recognised occupier, pets, or a visitor. CEO (Housing) may seek immediate termination of a tenancy for serious tenant damage under section 97(2) of the *Residential Tenancies Act 1999*.

4.2. No illegal conduct or nuisance on premises

Tenants have a responsibility under section 54 of the *Residential Tenancies Act 1999* that they must not use the premises or cause the premises for an illegal purpose; or cause or permit a nuisance on the premises; or cause or permit ongoing or repeated interference with the reasonable peace or privacy of another person in premises of the premises to which the agreement states. For more information of illegal conduct please see the *Illegal Use of a Dwelling* policy.

4.2.1. Antisocial behaviour

The *Housing Act 1982 (28A)* states that behaviour is considered to be antisocial if it:

- involves abusive or violent behaviour directed to a person; or
- creates alarm or fear in, or annoyance to, neighbours or others in the vicinity; or
- involves graffiti, littering or vandalism.

It is CEO (Housing)'s preference that antisocial behaviour cease and the tenancy continue.

Where an incident of antisocial behaviour is substantiated and constitutes a breach of the tenancy agreement, CEO (Housing) will issue a Notice to Remedy under section 96B of the *Residential Tenancies Act 1999*.

Where a tenant does not remedy the breach or take steps to remedy the breach, termination may be sought in accordance with section 100A of the *Residential Tenancies Agreement 1999*.

Where a tenant seriously or repeatedly breaches the terms of Tenancy Agreement, termination of the tenancy may be sought in accordance with section 100 of the *Residential Tenancies Act 1999*.

CEO (Housing) may take immediate action to seek termination of a tenancy under section 97 of the *Residential Tenancies Act 1999*, where a substantiated incident of antisocial behaviour has, or is likely to, cause serious damage to GEH premises or personal injury to housing staff or contractors or other people in the vicinity of the premises.

Any conduct of a person who is on the premises with the consent of the tenant, will be legally considered to be the conduct of the tenant. The tenant is responsible for this conduct, unless that conduct is considered to be an act of domestic violence under the *Domestic and Family Violence Act 2007* (refer to section 3.7).

4.3. Role of the Interagency Steering Committee

On occasions CEO (Housing) may seek the assistance of the GEH Interagency Steering Committee (ISC) in dealing with a tenancy. Depending upon the circumstances, CEO (Housing) may seek the assistance of the employing agency's ISC representative in applying the appropriate policies. The role of the ISC representative will be to act as mediators in disputes or assist CEO (Housing) in applying the appropriate policies. Refer to the GEH Operational Overview policy for more information on the roles and responsibilities of the ISC.

4.4. Unlawful use of premises

If a commercial business conducted from a residential dwelling is illegal under the conditions of the tenancy agreement or local laws, CEO (Housing) will request that the business be halted immediately. Non-compliance with this request may result in termination. However, CEO (Housing) recognises that a legitimate business may receive complaints without breaching the tenancy agreement. In these instances, CEO (Housing) will work with tenants to make a business more tolerable to neighbours. See the *Home Businesses and Self-Employment* policy. Under section 88A or 96B of the *Residential Tenancies Act 1999*, tenants who

seriously breach their tenancy agreement through criminal activities may have their tenancy terminated. This is generally automatic in the case of the cultivation or selling of illegal drugs.

5. Decision-making (delegation and discretion)

The CEO (Housing) may delegate a power or function under the *Housing Act 1982* or other Act. Delegated officers may make decisions on behalf of the CEO (Housing) in line with the Housing Delegations and the Department's Financial Management Delegations.

A discretionary decision may be made outside general application of policy if it supports the policy intent, will prevent an employee or agency from being unfairly disadvantaged, and is in line with the Department's delegations and legislative obligations.

6. References

6.1. Legislation

Housing Act 1982

Residential Tenancies Act 1999