

# Termination of a Tenancy

## Policy

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# Policy

## 1. Purpose

This policy outlines how and when a public housing tenancy can be ended, considering the needs of the tenant alongside the Chief Executive Officer (Housing)'s (CEO (Housing)) aim to support eligible households while maintaining community harmony and respecting neighbourhood standards.

The CEO (Housing) will take reasonable steps to preserve tenancies where appropriate to do so. As each household has different circumstances, the CEO (Housing) will work closely with affected tenants to identify alternative housing options following termination.

If there are concerns that termination places children at risk, a notification should be made to the Department of Children and Families' (DCF).

## 2. Objectives

The objectives of this policy are to ensure:

- Public housing tenancies are ended in a fair, transparent, equitable, and client centred manner.
- Public housing tenancies are preserved, where appropriate to do so.
- Compliance with relevant legislation.

## 3. Scope

This policy applies to all public housing tenancies.

## 4. Policy detail

A tenancy is terminated when:

- The tenant or the CEO (Housing) terminates the tenancy.
- The Northern Territory Civil and Administrative Tribunal orders a termination of the tenancy.
- The premises is abandoned by the tenant.
- A sole tenant dies (regardless of where other residents including a spouse continues to reside at the tenancy).
- A person with superior title to the landlord's title becomes entitled to possession of the premises.
- The tenant gives up possession with the consent of the CEO (Housing).
- An order terminating the tenancy is made by the Local Court under the *Domestic and Family Violence Act 2007* under a Domestic Violence Order.

All public housing tenancies must be terminated in accordance with the relevant legislation. For tenancy agreements which commenced from 1 March 2000, the *Residential Tenancies Act 1999* applies. Where a tenancy agreement commenced before 1 March 2000, the *Tenancy Act 1979* applies.

On application by the tenant or the CEO (Housing) to the Northern Territory Civil and Administrative Tribunal, any termination of a tenancy under Part 11 of the *Residential Tenancies Act 1999* may be declared to have no effect, which means that the termination is void. It is therefore incumbent on the parties to ensure that the termination conforms with the requirements of the legislation.

## 4.1. Termination by either the tenant or the CEO (Housing)

### 4.1.1. If premises flooded, unsafe or uninhabitable

Under the *Residential Tenancies Act 1999*, either the tenant (section 92) or the CEO (Housing) (section 86) may terminate a tenancy by 2 days' notice in writing if:

- access to the premises has not been available for more than three days because of flooding; or
- continued occupation of the premises by the tenant is a threat to the health or safety of the tenant or members of the public or a threat to the safety of the CEO (Housing)'s property; or
- the premises have become uninhabitable.

The CEO (Housing) will ensure tenants have appropriate accommodation if required to vacate at short notice. If the deterioration of the premises was not due to a breach of the tenancy agreement, the tenant will be offered a transfer to another public housing premises, or to return to the premises once repaired. Refer to the Transfers within public housing policy.

## 4.2. Termination by the tenant

A tenant may terminate their tenancy to:

- leave public housing; or
- take part in a tenant-initiated transfer to other public housing premises (including approved house swaps)

Notice must be in writing and signed by the tenant in accordance with section 101(2) of the *Residential Tenancies Act 1999*. If there is more than one signatory to the tenancy agreement, the notice must be signed by each signatory as all signatories to a tenancy agreement are tenants at law with joint liability under the tenancy agreement.

### 4.2.1. Without grounds

A tenant may terminate their tenancy agreement without specifying grounds by giving notice in accordance with section 101(2) of the *Residential Tenancies Act 1999* with:

- 14 days' notice for a periodic tenancy agreement (section 94); or
- 14 days' notice prior to the end of a fixed term tenancy agreement (section 95).

### 4.2.2. Give up possession with consent

A tenant may give up possession of their premises by providing notice in accordance with section 101(2) of the *Residential Tenancies Act 1999* with the consent of the CEO (Housing) under section 82(1)(f) of the *Residential Tenancies Act 1999*.

If a tenant seeks to give up possession with the CEO (Housing)'s consent, consent will not be withheld by the CEO (Housing). The CEO (Housing) will seek to understand where the tenant intends to go and, where required, provide accommodation referrals to avoid exits into homelessness.

## 4.3. Termination by the CEO (Housing)

### 4.3.1. Termination of a fixed term tenancy at end of term

A fixed term tenancy agreement may be used for a social head leasing property, probationary tenancy, for existing tenants when transferring to a new premises, or for tenants on the Employment Incentive Scheme.

A fixed term tenancy agreement for a probationary period is made between the CEO (Housing) and new public housing tenants, tenants returning to public housing after a period of exclusion following termination of a previous tenancy agreement, or existing tenants who are transferring to a new property. The probationary tenancy agreement is initially for a six-month period. The probationary period may be extended for a further six months, lapse to a periodic agreement or in some circumstances, the probationary tenancy agreement may be terminated due to unreasonable behaviour.

Under section 90 of the *Residential Tenancies Act 1999* the CEO (Housing) may terminate a fixed term tenancy, that is due to terminate on a particular date, by giving notice of intention to terminate at least 60 days prior to that date. The notice of termination must be in accordance with section 101(1) of the *Residential Tenancies Act 1999*.

A tenancy may be terminated under s90 due to factors which may include but are not limited to:

- Failure to maintain yard to a reasonable condition;
- Failure to remove obsolete items from the premises such as abandoned vehicles or white goods;
- Reported and substantiated antisocial behaviour, including concerns with visitor management or property damage;
- Consistent failure to pay rent on time or cancellation by the tenant of their Centrelink direct deduction authority (if applicable);
- Lack of meaningful engagement by the tenant with the CEO (Housing), or with services following referral by CEO (Housing), which have been offered to support the tenant to meet their obligations under the tenancy agreement; or/and
- Consistent failure to report damage or maintenance needs.

The CEO (Housing) will offer the tenant referrals to appropriate support services and programs, as soon as potential areas of concern are identified, to assist the tenant to avoid unreasonable behaviour, to meet the conditions of their lease agreement, and sustain the tenancy.

The CEO (Housing) will review all circumstances of the tenancy and consider the relevant precedents and legislation before this option is considered.

### 4.3.2. Drug premises order made

The CEO (Housing) may terminate a tenancy with 14 days' notice under section 88A of the *Residential Tenancies Act 1999* where a drug premises order is in force under the *Misuse of Drugs Act 1990*.

The 14 days' notice must be in accordance with section 101(1) of the *Residential Tenancies Act 1999*. Refer to the *Illegal Use of a Dwelling* policy for more information.

### 4.3.3. House swaps

In some cases, tenants may have moved between public housing premises without prior approval from the CEO (Housing) (i.e. a 'house swap'). Where tenants do not have a tenancy agreement for the premises they are living in, the CEO (Housing) will work to ensure that any existing tenancy agreements with previous tenants are lawfully terminated. This may allow occupants to enter into a new tenancy agreement for the

premises they are residing in providing they are eligible for public housing and the premises matches their entitlement.

Refer to the Transfers within public housing policy, Eligibility for Public Housing policy and the Tenancy Agreements for Public Housing policy for more information.

#### 4.3.4. Abandoned premises

In some instances a tenant will vacate the premises without informing the CEO (Housing). Where the CEO (Housing) has reasonable grounds to believe that the premises has been abandoned and rent is outstanding, the premises may be deemed as abandoned under section 108 of the *Residential Tenancies Act 1999*.

If rent is still being paid, or if there is doubt as to whether the premises has been abandoned, the CEO (Housing) will apply to the Northern Territory Civil and Administrative Tribunal to have the premises declared abandoned.

#### 4.3.5. Renovation, Replacement or Demolition of public housing premises

Under Part 15, Division 2, section 138 of the *Residential Tenancies Act 1999*, the CEO (Housing) may terminate a tenancy agreement if the CEO (Housing) requires vacant possession of the premises for the purpose of renovation, replacement or demolition.

The (CEO Housing) will offer the tenant:

- transitional accommodation, without charge, in accordance with section 140 of the *Residential Tenancies Act 1999* and will pay the reasonable expenses of the tenant to move to the transitional accommodation and subsequent move to the renovated premises; or
- The new premises and pay the reasonable expenses of the tenant to move to the new premises.

The CEO (Housing) will terminate the tenancy pursuant to section 139 of the *Residential Tenancies Act 1999* providing the following have been met:

- There has been consultation with the tenant regarding the renovation, replacement, or demolition of the premises;
- The CEO (Housing) has given the tenant a notice of intention to terminate;
- The CEO (Housing) has undertaken to enter into a new tenancy agreement with the tenant for either return to the renovated premises or occupation of new premises;
- The offer of transitional accommodation is accepted by the tenant;
- The CEO (Housing) and the tenant have agreed to a date for vacant possession of the premises.

#### 4.3.6. Relocating a tenant in public housing

The CEO (Housing) may terminate a tenancy agreement and relocate a tenant to other accommodation under Part 15, Division 3, Section 144 (1) of the *Residential Tenancies Act 1999* for the following reasons:

- The premises have more bedrooms than the tenant needs and the other accommodation would have a suitable number of bedrooms; or
- The premises do not meet the social, physical, psychological or medical needs of the tenant and the other accommodation would be better suited to those needs; or
- The premises or neighbours pose a risk to the health or safety of the tenant and the other accommodation would be safer.

The CEO (Housing) may also terminate a tenancy agreement if the CEO (Housing) offers to relocate the tenant to other accommodation under Part 15, Division 3, Section 144 (2) of the *Residential Tenancies Act 1999* where the tenant has engaged in the following:

- unacceptable conduct as specified in section 100(1)(a), (b) or (c) of the *Residential Tenancies Act 1999*; or
- antisocial behaviour specified in section 28A of the *Housing Act 1982*.

## 4.4. Termination by the Northern Territory Civil and Administrative Tribunal

Either the tenant, the CEO (Housing) or an interested person can apply to the Northern Territory Civil and Administrative Tribunal to terminate a tenancy.

### 4.4.1. Application by tenant

The *Residential Tenancies Act 1999* provides for tenants to apply to the Northern Territory Civil and Administrative Tribunal to terminate a tenancy for:

- Serious breach by landlord (section 98).
- Hardship (section 99).
- Failure to remedy breach after notice given (section 100A(2)).

While tenants can seek termination in this manner, it may not be necessary to make an application. The CEO (Housing) will not withhold consent for a tenancy to end without notice should a tenant choose to give up possession of the premises (refer to section 4.2.2 of this policy).

### 4.4.2. Application by the CEO (Housing)

#### 4.4.2.1. Tenancy Agreement Breach and Abandonment

The CEO (Housing) will only seek to terminate a tenancy for an eligible household as a last resort and will work with the tenant to meet their responsibilities under their tenancy agreement. Where the tenant has breached the tenancy agreement it is the CEO (Housing)'s preference that any breach is remedied so that the tenancy can continue. Refer to the Tenancy Agreement Breach policy for more information on the CEO (Housing)'s approach to breaches of public housing tenancy agreements.

The CEO (Housing) will only apply to the Northern Territory Civil and Administrative Tribunal to terminate a tenancy for a breach where a tenant has seriously or repeatedly breached the terms of the tenancy agreement, in accordance with Part 11, Division 4 of the *Residential Tenancies Act 1999*. The Tribunal can make an order for possession of the premises.

Examples for termination include:

- Serious breach by tenant (section 97).
- Failure by tenant relating to an acceptable behaviour agreement (section 99A).
- Conduct of tenant unacceptable (section 100).
- Failure to remedy breach after notice given, including for failure to pay rent (section 100A).
- Abandoned premises (section 108).

Refer to the Acceptable Behaviour Agreement policy, Red Card policy or Debt Management policy for further information.

#### 4.4.2.2. Household no longer eligible for public housing

The CEO (Housing) provides public housing to those most in need, for the duration of that need. To ensure that public housing is available to help eligible Territorians in need, if a tenancy is no longer eligible for public housing, the CEO (Housing) may apply to the Northern Territory Civil and Administrative Tribunal to terminate the tenancy and make an order for possession under section 99B of the *Residential Tenancies Act 1999*.

In this instance, the CEO (Housing) will provide written notice to the tenant advising them that they are ineligible at least 28 days prior to applying to the Tribunal.

#### 4.4.3. Application by an interested person

The CEO (Housing) will be notified and given an opportunity to be heard by the Northern Territory Civil and Administrative Tribunal, if an interested person makes an application to have a public housing tenancy terminated under the *Residential Tenancies Act 1999*, section 100 (Conduct of a tenant unacceptable).

#### 4.4.4. Superior title

Under section 82(d) and section 107 of the *Residential Tenancies Act 1999*, the CEO (Housing)'s role as a landlord may end and a person with superior title (meaning a person with a better right of ownership over the premises) may become the landlord. This may happen where the CEO (Housing) manages housing under a lease arrangement, for example in a remote community or under the social housing head-leasing program.

The CEO (Housing) will advise tenants if there is a change to their landlord.

### 4.5. Death of a tenant

The CEO (Housing) recognises that the death of a tenant can be a difficult and emotional time for other residents and/or family members. The CEO (Housing) does not require a copy of the death certificate or written advice of the death. The CEO (Housing) may independently verify that the death has occurred to ensure that a tenancy is not wrongfully terminated.

#### 4.5.1. More than one signatory to the tenancy agreement (joint tenancy)

Where more than one person has signed the tenancy agreement and one signatory dies, the tenancy continues with the remaining signatories to the tenancy agreement. Where the size of the premises no longer matches the household's entitlement, the household may be considered for transfer to other public housing premises, but not within six months following the death of a tenant. Refer to section 4.4.2.2 of this policy, if the household is no longer eligible for public housing and section 4.3.6 of this policy if the remaining household members are required to relocate to a premises which matches their entitlement.

#### 4.5.2. One signatory to the tenancy agreement (sole tenant)

Under section 82(2) of the *Residential Tenancies Act 1999*, if a sole tenant living in public housing premises dies, the tenancy is terminated.

If the death of a sole tenant results in dependent children remaining unsupervised in the premises, CEO (Housing) will immediately notify DCF via central intake.

Where the death of a sole tenant leaves recognised occupiers in the premises, the CEO (Housing) may offer a new tenancy agreement to the recognised occupiers if they are eligible for public housing. The CEO (Housing) has discretion to offer a new tenancy agreement to occupants who are not recognised occupiers if they are eligible for public housing and have been ongoing members of the household (i.e. not a temporary visitor).

Where the size of the premises no longer matches the household's entitlement, the CEO (Housing) may offer a 6 month fixed term tenancy agreement for the current premises. The household may be requested to transfer to other public housing premises at the end of the fixed term tenancy agreement. Refer section 4.3.6 of this policy and the Transfers within Public Housing policy.

Where occupants are not eligible to remain in public housing following the death of a sole tenant, the CEO (Housing) will allow up to six weeks for occupants to arrange alternative accommodation. The CEO (Housing) will allow up to six weeks for an executor or administrator of the deceased's estate to make arrangements for personal belongings left at the premises. No rent is charged during this period.

## 4.6. Termination by the Local Court

Under section 23 of the *Domestic and Family Violence Act 2007*, under a Domestic Violence Order, the Local Court may make an order:

- terminating the tenancy agreement: or
- terminating the tenancy agreement and creating a new tenancy agreement for the benefit of the protected person and anyone else who was a party to the terminated agreement: or
- Terminating the tenancy agreement and creating a new tenancy agreement for the benefit of the defendant and anyone else who was a party to the terminated agreement.

The other party retains all wait time served for public housing as an individual accrued in the wait time for the premises they are leaving.

## 5. Outgoing condition report

An outgoing condition report may be completed within three business days after the tenant gives up vacant possession of the premises. The tenant must be invited to attend the outgoing inspection. See the Inspections policy for more details.

The CEO (Housing) may offer a pre-vacate inspection to the tenant, to determine whether any cleaning and/or maintenance is necessary, however the tenant is not obliged to accept it.

The CEO (Housing) may complete a condition report within three business days after forming the opinion that a tenant has apparently abandoned the premises.

## 6. Security deposit (bond)

The tenant is entitled to have the security deposit (bond) returned to them at the end of the tenancy, less any amount the CEO (Housing) is entitled to retain.

At the end of a tenancy, the CEO (Housing) will validate any tenancy related charges in accordance with the Debt Management policy. The bond (or part of it) may be retained by the CEO (Housing) to pay tenancy related charges owed in accordance with section 112 of the *Residential Tenancies Act 1999*.

## 6.1. Transfer of Security deposit (bond)

If the CEO (Housing) terminates a tenancy under Part 15, Division 2 of the *Residential Tenancies Act 1999*, the tenant can choose to either have the money they have paid as a security deposit returned to them, or consent to the CEO (Housing) retaining the money in trust as a security deposit under the new tenancy agreement.

If the CEO (Housing) terminates the tenancy agreement under Part 15, Division 3, the tenant is not entitled to have the security deposit returned. The *Residential Tenancies Act 1999* enables the CEO (Housing) to retain any security deposit previously paid by the tenant as a security deposit under the tenancy agreement for the new accommodation, less any amount the CEO (Housing) is entitled to retain.

The above situations are the only circumstances that allow for the transfer of the security deposit. For all the other terminations the security deposit cannot be transferred and must be dealt with under Section 112 of the *Residential Tenancies Act 1999*.

## 7. Decision-making (delegation and discretion)

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

No discretion can be applied to the timeframes and notification requirements for terminations under the *Residential Tenancies Act 1999*. Discretion can be applied to timeframes for occupants to vacate the premises following the death of a sole tenant, and to offer a tenancy agreement to occupants who are not recognised occupiers.

A discretionary decision may be made outside the general application of policy if it supports the policy intent, will prevent a client from being unfairly disadvantaged, and is in line with the CEO (Housing)'s delegations and legislative obligations. Refer to the Discretionary Decision Making policy.

## 8. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the CEO (Housing), they can access the CEO (Housing) complaints and/or appeals processes. For further information, please refer to the Complaints and/or Appeals policies.

## 9. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly.

## 10. References

### 10.1. Legislation

Domestic and Family Violence Act 2007

Housing Act 1982

Misuse of Drugs Act 1990

Residential Tenancies Act 1999

Tenancy Act 1979

## 10.2. Policies

Acceptable Behaviour Agreement policy

Appeals policy

Complaints policy

Debt Management policy

Discretionary Decision Making policy

Domestic and Family Violence policy

Eligibility for Social Housing policy

Employment Incentive Scheme policy

Entitlement policy

Illegal Use of a Dwelling policy

Red Card policy

Renovation, Replacement or Demolition of Public Housing

Tenancy Agreement Breach policy

Tenancy Agreements for Public Housing policy

Social Housing Transfers policy