

### **Leaving during a fixed-term agreement**

You can end your tenancy agreement during the fixed term for certain legally specified reasons (given below).

If you want to otherwise end your agreement early, consider:

- transferring your tenancy to someone else (you need the landlord's written consent)
- breaking your tenancy agreement (this can be costly).

### **Legally specified reasons**

You can end your tenancy ('terminate'):

- because the landlord/agent has 'breached' the tenancy agreement – they have failed to meet their obligations under the agreement
- because the premises have become unusable
- because the landlord/agent has increased the rent during a fixed-term tenancy agreement of 2 years or more
- on a prescribed 'extraordinary' ground (such as because of domestic violence)
- because you would suffer undue hardship if the tenancy continued.

To end your tenancy this way, you must:

- give the landlord/agent a written *termination notice* and vacate – move out and return the keys – according to your notice, and/or
- apply to the NSW Civil and Administrative Tribunal for a *termination order*. If the tribunal makes the order, it will end your tenancy and specify the day by which you must vacate.

### **Breach of agreement**

Alternative to terminating

- Apply to the tribunal for an order that the landlord/ agent fix the breach (e.g. they do repairs you have requested) or that they stop breaching the agreement (e.g. they stop interfering with your privacy).
- Giving a termination notice
- Give a minimum 14-day termination notice that says it is for breach of agreement.
- The landlord/agent may apply to the tribunal to dispute your notice. If the tribunal finds that the landlord/agent has fixed the breach, it may cancel your notice and your tenancy will continue.
- Applying for a termination order

You must apply within 3 months after you become aware of the breach. The tribunal may make the order if it finds that:

- the landlord/agent breached the agreement, and
- the breach is sufficient to justify termination.

When deciding, the tribunal will consider: the nature of the breach, any previous breaches, whatever the landlord/agent did to fix the breach, whatever you did about the breach and the history of the tenancy.

If the tribunal does not make the order, your tenancy will continue.

### **Premises unusable**

Give an immediate termination notice and vacate if the premises:

- are destroyed or become wholly or partly unlivable (other than due to breach of agreement), or
- can no longer be lawfully used as a residence,
- or
- are acquired or appropriated by a government authority by compulsory process.

## **The termination notice**

- The termination notice must be in writing, signed by you and say:
- the address of the premises
- the day by which you will vacate (check how much notice you must give)
- the reason.

You must properly send or deliver the notice to the landlord/agent: in person, by post, by email (*to an email address specified by the person for the service of documents of that kind*), or by hand in an addressed envelope to a mailbox at their home or business address. Keep a copy of the notice and record how and when you sent or delivered it.

If you post the notice, allow 7 working days for delivery.

You can withdraw the termination notice at any time with the landlord's (and any co-tenants') consent.

## **Rent increase in a 2-year or more fixed term**

Give a minimum 21-day termination notice and vacate. The notice must say that it is because the landlord/agent has increased the rent during the fixed term.

## **Extraordinary grounds**

Give a minimum 14-day termination notice on any of the following grounds:

- You have been offered and accepted a place in social housing.
- You need or have accepted a place in an aged-care facility.
- The landlord wants to sell the premises and they did not tell you this before entering into the tenancy agreement.
- A co-tenant or occupant or former co-tenant or occupant has been excluded from the premises by a final apprehended violence order.
- Vacate according to your notice. You will not have to pay the landlord compensation for terminating early.

## **Hardship**

Apply to the tribunal to terminate your fixed-term agreement if there are special circumstances and continuing the tenancy would cause you undue hardship.

The tribunal will consider evidence of your circumstances (e.g. finances or health) and those of the landlord. If it makes the order, it may also order that you compensate the landlord.

## **Transfer of tenancy**

You can transfer the whole tenancy to another person if the landlord gives written consent. The landlord does not have to have good reason to withhold consent.

If you are a co-tenant and want to transfer your tenancy when at least one of the original tenants will remain, the landlord must not 'unreasonably' withhold consent.

## **Breaking the agreement**

Write to the landlord to tell them you want to leave. Give as much notice as possible. Try to get their consent in writing.

If the landlord does not consent, you can still end your tenancy by moving out and returning the keys.

Stop paying rent on the day you vacate. Note that there are money consequences for breaking the agreement – see below.

## **Compensation to the landlord**

Check your tenancy agreement under 'Additional terms'. If a break fee is specified (see next page), this is the amount you must pay the landlord. However, you can still try to negotiate a lower amount.

***A break fee is specified***

For fixed-term agreements of 3 years or less, the break fee is:

- an amount equal to 6 weeks rent, if less than half of the fixed term has expired, otherwise
- an amount equal to 4 weeks rent.

The same applies to fixed-term agreements of more than 3 years unless the tenancy agreement specifies a break fee of another amount.

***No break fee is specified***

Negotiate an agreed amount of compensation with the landlord/agent. (The landlord may agree not to be compensated.) Discuss whether the landlord will claim from your bond. Put any agreement in writing.

If you cannot come to an agreement, the landlord/agent may apply to the NSW Civil and Administrative Tribunal for an order that you pay a certain amount in compensation. The landlord must:

- provide the tribunal with details of their losses (e.g. lost rent, advertising costs, an agent's re-letting fee)
- outline the steps they took to minimise their losses (e.g. advertising for a new tenant without delay).