

South Western Sydney	4628 1678
Central Coast	4353 5515
Hunter	1800 654 504
Mid North Coast	1800 777 722
Northern Rivers	1800 649 135
Illawarra/South Coast	1800 807 225
New England and Western NSW	1800 836 268
South West NSW	1800 642 609
Older Persons Tenants Service	9566 1120 1800 131 310

There is no requirement for landlords or agents to give tenants advance warning of termination under these circumstances.

In this situation the tenant had not paid enough attention to the date their rent was due and the landlord had the right to issue a termination notice.

From 19 June 2009, tenants must be given a minimum of 30 days notice in writing, before the mortgagee can take possession of the property.

Tenants are not required to pay any rent for 30 days after they receive the notice. If advance rent has been paid covering any part of this period, the tenant is entitled to have that rent refunded.

Mortgagees and tenants can agree to reach a solution that meets the needs of both parties.

out should first be discussed between the parties. If agreement cannot be reached, either party may send a claim form to Fair Trading without the signature of the other party. A notice will be sent to the other party advising them of the claim and giving them 14 days to apply to the Tribunal to dispute it. If no reply is received within 14 days the bond will be paid out as per the claim form.

No matter who applies to the CTTT, it is always up to the landlord to prove any claim on the bond. 'Claim for refund of bond money' forms can be obtained from the Fair Trading website, any Fair Trading Centre or call 13 32 20.

Returning keys

The tenant is responsible for returning all copies of keys, security and remote control devices given to them at the start of the tenancy. If the keys are not returned the tenant may be liable for the cost of changing the locks.

Tenants advice services

Free tenancy advice, information and advocacy services for private and public tenants are provided by community organisations throughout NSW.

Tenants Advice and Advocacy Services

Region/service	Phone
Inner Sydney	9698 5975
Inner Western Sydney	9559 2899
Eastern Sydney	9386 9147
Southern Sydney	9787 4679
Western Sydney	9413 2677
Northern Sydney	9884 9605

Aboriginal tenants services	Phone
Greater Sydney – Sydney Metro, Hawkesbury, Wyong, Gosford, Blue Mountains Wollondilly	9282 6729
Southern NSW	1800 672 185
Western NSW	1800 810 233
Northern NSW	1800 248 913

Tenants Union hotline

Tel. 8117 3750 or 1800 251 101

www.tenants.org.au

Case study

The Office of Fair Trading received a complaint from a tenant about receiving a termination notice due to unpaid rent. The tenant had not been given any prior warning about the rent arrears, so was very surprised to get a termination notice.

The tenant had been more than 14 days behind in rent, which is a breach of the tenancy agreement.

Fair Trading advised the tenant that the landlord or agent had acted appropriately under the law.

occurs over time with the reasonable use of the property by the tenant and the ordinary operation of natural elements, even though the property receives reasonable care and maintenance.

Terminations by the CTTT

The CTTT can make an order against a tenant ending the tenancy and giving possession of the

at the time of the hearing and that a rehearing would lead to a different result.

Can a tenant be evicted for complaining?

A landlord cannot evict a tenant for asserting their rights. If the tenant refuses to leave the property, the landlord will need to apply to the CTTT for a termination and possession order.

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The tenant should ensure they attend the CTTT hearing and let the CTTT know about the landlord's actions. The CTTT can refuse to grant a termination order to the landlord.

Undue hardship

A tenant or landlord can, at any stage of the tenancy, apply to the CTTT to end the agreement because, in the special circumstances of the case, they would suffer undue hardship if the tenancy were to continue. No prior notice is required. The applicant who claims hardship must satisfy the CTTT that there are grounds for ending the agreement.

If the CTTT makes an order to end the tenancy, the applicant may be ordered to pay compensation to the other party.

If a tenant is notified about an application to end the tenancy, it is important to attend a CTTT hearing so that the CTTT is able to hear both sides of the dispute. The tenant may be given more time to move out or, if they have a good case, the CTTT may decide they can stay.

Mortgagee re-possession

When a landlord is unable to pay back a loan taken out to purchase an investment property, the mortgagee (the lender – normally a bank or other financial institution) usually wants to take possession of the property in order to sell it and recover their money. This is what is referred to as mortgagee re-possession.

The mortgagee may hold off on giving notice or extend the time already given to the tenant to vacate. The mortgagee may decide not to sell the property and offer the tenants a new residential tenancy agreement. If the tenant finds a new place to live after being given notice by the mortgagee, they can move out immediately. Mortgagees are now able to authorise the release of the tenant's rental bond.

For more information about this new law, refer to the Mortgagee re-possession web page.

Final inspection

At, or as soon as possible after the end of the tenancy, both the tenant and the landlord/agent should do a final inspection of the property and complete the condition report.

However, if a reasonable opportunity is given to the other party to be there and they do not show up, the report may be filled out in their absence.

The condition report can be used as evidence if a dispute arises over the condition of the premises.

Bond refunds

At the end of the tenancy, after the final inspection, a 'Claim for refund of bond money' form should be filled out by the landlord/agent, signed by the tenant and sent to the Office of Fair Trading. Tenants should give their new address to Fair Trading.

Any disagreement over how the bond is to be paid

continuous agreement in place:

- the tenant must give at least 21 days written notice

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- a re-letting fee (usually 1 week's rent) when the property is let by an agent who charges the landlord fees for finding new tenants
- advertising costs
- fee for preparation of a new agreement
- the difference between the current rent and the new rent for the rest of the fixed-term if the premises can only be re-let at a lower rent.

For a landlord to successfully claim compensation, they must be able to show that their loss was caused by the tenant breaking the agreement early, not by other factors. For example, if a tenant breaks the agreement just prior to the expiry date, the full amount of re-letting and advertising charges may not be able to be passed on since the landlord would have incurred these expenses shortly anyway. Both parties have a duty to keep their losses to a minimum. This means that the landlord must make a reasonable effort to find a new tenant, otherwise any claim they later make may be reduced by the Consumer, Trader and Tenancy Tribunal (CTTT).

The role of the CTTT is to quickly and effectively resolve disputes between tenants, landlords, traders and consumers.

For tenants, making the property readily available for inspection may help to reduce the costs involved in finding a replacement tenant.

Fair wear and tear

It is the tenant's responsibility to leave the property at the end of a tenancy in nearly the same condition, fair wear and tear excepted, as set out in the original Condition Report.

Fair wear and tear means the deterioration that

property to the landlord. The possession order will usually give the tenant between 5 and 28 days to leave the property, but not in all cases.

If the tenant is not out by the date of the order, the landlord can get a 'warrant for possession' from the Registry of the CTTT and go to the Sheriff's Office to have it enforced. A Sheriff's Officer can remove a tenant from the premises, with police help if needed.

Tribunal Order essential

Locking out or evicting a tenant without a Tribunal Order is illegal. A landlord/agent must follow the correct process as stated in the legislation.

Application to the CTTT without notice

The landlord can apply directly to the CTTT for an order for possession of the premises without giving a tenant notice of termination, but only in the following circumstances:

- the tenant has injured or is likely to injure the landlord, agent or neighbours
- the tenant or their guests have deliberately or recklessly caused serious damage to the property.

Rehearings

CTTT rehearings are not an automatic right. An application can be made to the CTTT for a matter to be re-heard but only if the reasons are justified. The application must be made within 14 days after the date of notification of the CTTT's order.

The applicant must be able to show that the decision was not 'fair and equitable', or it was against the weight of evidence, or significant new evidence is now available that was not available

Moving out

Information for renters

Either the landlord or the tenant (renter) usually terminates a tenancy by giving notice to the other party.

Notice of termination

A notice of termination must:

- be in writing
- state the address of the property
- be signed and dated
- allow the required period of time
- give the exact date on which the tenant intends to or is requested to move out (ie. do not use words such as 'by' or 'on or before' in the notice)
- give full details of breaches (if any) or reasons for ending the agreement
- include a statement that information about the tenant's rights and obligations can be found in the tenancy agreement.

Serving notices

The notice can be posted or given personally. It cannot be put under a door or placed in the letterbox by the person sending the notice. The notice period is counted from the day after the notice is served.

If the notice is sent by post, add at least 4 working days (not including the day the notice was sent) to the amount of notice, to allow time for delivery.

Notice periods

Most agreements are for a fixed-term (eg. 6 or 12 months). When the fixed-term period of the agreement is due to run out either party can give no less than 14 days written notice to end the tenancy. This notice can be served up to and including the last day of the fixed-term. Once the fixed-term period has ended and/or there is a

- the landlord must give at least 60 days written notice.

What if the property is sold

If the sale contract says that the property must be vacant when the sale is complete, after the sale contracts have been exchanged, the landlord must give the tenant at least 30 days written notice (if the fixed-term agreement has expired). With a fixed-term agreement the tenant is entitled to the balance of any time remaining in the period of the agreement. In these situations, the buyer has little option but to let the tenancy continue as it is inherited with the sale. However, the buyer and tenant can negotiate an agreement for the tenant to move out earlier and be compensated. Any agreements reached should be put in writing.

Notice of breach

A notice of termination may be given at any time if either party seriously or persistently breaches a term of the agreement, or if the tenant is more than 14 days in rent arrears. At least 14 days written notice must be given, plus 4 days if the notice is posted.

Breaking an agreement early

If the tenant wants to leave prior to the end of a fixed-term, they should give as much notice as possible, preferably in writing. They should state the exact date they intend to leave and that they want the landlord/agent to find a new tenant. The tenant should keep a copy of the letter.

Breaking an agreement early can be costly. The landlord can claim compensation for any losses incurred as a result of a tenant ending the agreement early, such as:

www.fairtrading.nsw.gov.au



for consumers
& traders

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never happens first)