

LEAVING A TENANCY AFTER A DISASTER

If the property is uninhabitable:

- You or your landlord/agent can give an immediate termination notice if the premises are uninhabitable (no longer fit to live in).
- Things that may make the home uninhabitable include:
 - The home is not structurally sound.
 - The home cannot be secured or is not weather-proof.
 - The plumbing or electricity are not working.
 - The water is unsafe to drink.
- The termination notice **MUST**
 - Be in writing,
 - Signed by the party issuing it, and
 - State the address,
 - State that the property is wholly or partly uninhabitable and why, and
 - State the date of termination.
- A termination notice does not automatically end your tenancy and may be disputed by the other party, who can make an application to the NSW Civil and Administrative Tribunal (**NCAT**) to settle the dispute.
- If you and your landlord agree the property is uninhabitable, the tenancy can be terminated and you can move out. Any overpaid rent must be refunded within 14 days of your request. It is best to request a refund when giving your notice.
- If the local council deems your home to be uninhabitable and you do not agree, you should seek legal advice about how to dispute it.

If you give the landlord a termination notice for uninhabitability:

- If you issue an uninhabitability notice to the landlord/agent and it is accepted, you may immediately move out, return the keys and stop paying rent.
- You should ask the landlord to accept your notice in writing.
- If the notice is accepted, a fixed term tenancy break fee will not apply.
- Remember, the landlord/agent may dispute your notice and apply to NCAT to refute the notice if they believe the premises are habitable.

If the landlord gives you a termination notice for uninhabitability:

- If you do not agree the property is uninhabitable, you may make an application to NCAT to dispute the termination notice.
- You **do not have to leave** until NCAT makes an order terminating the tenancy.
- If you agree and want to leave, you may leave any time before the termination date. You can stop paying rent on the day you vacate the property. You do not need to give additional notice, but informing the landlord/agent of the date you have left is recommended.
- No break fee will apply.
- Any overpaid rent must be refunded within 14 days of you requesting it.

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If the property is habitable

Your tenancy continues as normal and you should continue to pay your rent.

Breaking your Lease when the property is habitable

Periodic Tenancies:

- You must give a minimum 21 days' notice to terminate your periodic tenancy.
- Your notice must:
 - Be in writing.
 - State the property address.
 - Specify the date you will move out and hand back the keys (vacate date - at least 21 days after the date the notice is given).
 - Be signed by you and dated.
 - Delivered in the way the landlord has agreed to accept notices as set out in your lease (if by post, add 7 days for delivery when calculating the 21 day notice period).
- You do not have to pay rent after the specified vacate date (provided the correct notice period has been given).

Fixed Term Tenancies:

If you want to end the agreement early without a legal reason:

- You must write to the landlord/agent with your intended vacate date.
- If it is near the end of the fixed term, you may give at least 14 days' notice that you will leave on or after the last day of the fixed term. If you want to leave before the end of the fixed term, there is no notice period required, but you must continue to pay rent under the agreement until you vacate.
- You will also need to pay the relevant 'break fee' which could be equal to 1 to 6 weeks rent, depending on how far into your fixed term you are and the date of your tenancy agreement.
- If your fixed term agreement is for a term of more than 3 years, you may have to pay 'compensation' to the landlord to cover advertising costs, reletting fees and lost rent, until a new tenant is found. Your agreement may include a break fee amount. The landlord cannot claim an amount more than their loss and must take reasonable steps to minimise their loss.
- You may negotiate the break fee with the landlord/agent.
- It is a good idea to **get advice before terminating a fixed term agreement.**

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Ending your tenancy due to a landlord breach

- If the landlord has breached the tenancy agreement, for example they have failed to complete urgent repairs in a reasonable time, you can:
 - Give your landlord a notice terminating your tenancy, with at least 14 days notice, or
 - Apply to NCAT for a termination order. You must make this application within 3 months of becoming aware of the breach.
- Your landlord may dispute the termination and, if successful and you have already moved out, you may have to pay a break fee.
- We recommend you get advice before terminating your tenancy.

Northern Rivers Tenants Advice and Advocacy Service (NORTAAS):

For more information or advice call:

(02) 6621 1022 or 1800 649 135