

# Ending a Tenancy

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## 1 Purpose and Applicability

This policy explains how a tenant or Women's Housing Company will terminate a tenancy, including

- Grounds for termination; and
- Notice period of intention to terminate or vacate.

The policy sets the minimum requirements of tenants and minimum obligations of WHC. For tenants in difficult circumstances, staff of WHC will apply compassion in the enforcement of policies and will provide fairness in all decision making.

This policy applies to all transitional, social and affordable housing programs managed by WHC, but not to crisis accommodation. The applicable programs are:

- BlueCHP Affordable Housing Program (NRAS and non-NRAS)
- BlueCHP Social Housing Program (NRAS and non-NRAS)
- Social Housing Subsidy Program
- General Social Housing
- General Affordable Housing
- Transitional Housing
- Connect 100 program

This document satisfies the requirements of:

- The NSW Residential Tenancies Act 2010
- National Regulatory Code for Community Housing
- NSW Community Housing Rent Policy
- NSW Affordable Housing Guidelines

## 2 References

### 2.1 External or Statutory Requirements

- NSW Residential Tenancies Act 2010
- NSW Community Housing Access Policy (FACS)
- Housing Pathways (FACS)
- National Rental Affordability Scheme Guidelines (DSS)
- NSW Affordable Housing Guidelines (FACS)

### 2.2 Internal Requirements, Procedures and Forms

- Keeping a Tenancy
- Complaints and Appeals

## 2.3 Definitions

The following terms are used in this document, with specific meaning:

- a) “must” or “shall” or “will” designates a mandatory requirement or action
- b) “may” is an acceptable action or requirement but not mandatory
- c) “Pathways” means “Housing Pathways” which is the system for applying for social housing in NSW. Applicants fill out a single application form for assistance from either FACS or participating community housing providers such as Women’s Housing Company. Housing Pathways also maintains a single register of eligible applicants for social housing in NSW.
- d) “social housing” is subsidised rental accommodation for people on very low or low incomes who meet the eligibility requirements. In WHC, rent for general social housing tenants is set at 25% of income, and for BlueCHP Affordable Social Housing tenants, rent is 30% of income. Eligibility requirements for all social housing tenants are as set out in Housing Pathways.
- e) “affordable housing” is subsidised rental accommodation for very low, low or moderate income tenants and in NSW is managed in accordance with the NSW Affordable Housing Guidelines. Rent is set as either a percentage of income or as a discount to market rent. At WHC, the most that an affordable housing tenant will pay as rent is 30% of her income.
- f) “transitional housing” is short-term accommodation with access to support services for people who are homeless or at risk of homelessness.
- g) “tenancy agreement” or “rental lease” or “lease” is the written agreement between WHC and the tenant with all terms and conditions of the tenancy.
- h) “periodic agreement” or “continuous lease” means a tenancy agreement where there is no fixed date of termination, ie the tenant is able to remain in the property indefinitely, unless WHC has grounds for termination.
- i) “rebated rent” is the term in WHC rent statements that describes the rent that is payable by the tenant. In this document “rent” is used to mean “rebated rent”.
- j) “head leased property” refers to a property where WHC has rented it from the owner, usually from the private market, and then leases the property to the tenant. Bonds and rents are payable by the tenant to WHC.
- k) “The Tribunal” means the NSW Civil and Administrative Tribunal (NCAT), formerly known as the Consumer, Trader and Tenancy Tribunal (CTTT) is the independent body which deals with disputes between landlords and tenants.
- l) “Specific Performance Order” (SPO) is an order made by NCAT that enforces the tenant to pay rent on time

## 3 Requirements

### 3.1 General

The Residential Tenancies Act 2010 (RTA) provides the legislative framework in relation to terminating tenancies and the rights and obligations of tenants and the Women’s Housing Company (WHC). The RTA also specifies that as a social housing agency, WHC may terminate tenancies in cases where the tenant no longer satisfies eligibility requirements and/or has breached an acceptable behaviour agreement.

The NSW Office of Fair Trading website [www.oft.nsw.gov.au](http://www.oft.nsw.gov.au) has fact sheets about the requirements for the termination of lease agreements.

### **3.2 Tenant Initiated Termination**

In general all tenants are required to give WHC 21 days written notice of their intention to vacate a property, regardless of the type or length of lease. 14 days written notice is required in the following cases:

- the tenant is a transitional housing or a Connect100 tenant
- the tenant is moving to another social housing property (including to another social housing landlord)
- the tenant needs to move as a result of domestic violence or family violence, or as a result of a similar situation that places them at risk of harm
- the tenant needs to move to a care facility

All tenants are required to continue to pay rent until the end of the notice period. If a tenant vacates the property and returns the key before the end of the notice period, and a new tenant is able to commence the tenancy during the notice period, the departing tenant is entitled to a refund of any rent paid for the period after the new lease agreement starts.

WHC will conduct a final property inspection as soon as practical after the former tenant returns the keys or on the last day of the notice period. The former tenant is welcome to attend this inspection.

### **3.3 Landlord initiated termination**

WHC can initiate the termination of a tenancy agreement for any of the following reasons:

- it is the end of the lease for a head-leased property
- it is the end of the tenant's fixed term lease
- a tenant is found to have broken the terms and conditions of the lease
- a tenant has broken the terms of a specific performance order previously made by the NSW Civil and Administrative Tribunal (NCAT)
- a tenant is no longer eligible for the housing program they are housed under
- death of a tenant
- a tenant is no longer residing in the property, through having moved to another residential facility for more than 12 weeks, or having abandoned the property

All action to terminate a tenancy by WHC is carried out with regard to procedural fairness, taking into consideration the circumstances of the tenant and in accordance with applicable the legislation.

#### **3.3.1 Termination at the end of a lease**

If WHC intends to terminate a tenancy agreement at the end of a lease period where the tenant has not breached any of the terms of the tenancy and continues to be eligible for housing assistance, WHC will generally provide at least 90 days' notice of the intention to terminate. In instances where WHC is head leasing a property, then WHC is limited by the minimum notice period that the landlord has to give WHC, which is usually 30 days' notice, but can be as little as 14 days' notice.

In these cases, WHC will discuss alternative housing options with the tenant and assist with any rehousing needs, including a management transfer to another WHC property.

### **3.3.2 Termination due to program ineligibility**

WHC housing programs have specific eligibility requirements and WHC reserves the right to terminate a lease when the tenant is no longer eligible under the program requirements.

#### **Change in Household Composition**

WHC houses single women. Tenants' life choices may change and as a result their household composition may change, such as entering into a relationship, family reunion, or having a baby. If WHC becomes aware that there are additional permanent occupants in the property, WHC may terminate the lease with 90 days' notice. For the period that there are additional occupants in the property, the income of these occupants will also be included in the household's rent calculation.

WHC recognise that a change of income circumstances for tenants may impact on their eligibility for some housing programs. These income changes can be an increase or decrease to a tenant's overall income status which can have implications on program eligibility criteria. For example:

#### **Where a tenant's income exceeds the maximum income allowable under an affordable housing program**

If a tenant earns above the specified income limit for an affordable housing property they may have to vacate the property. However, there is a period of up to 12 months before the tenant will need to vacate and during this time WHC will discuss alternative housing options with the tenant. Refer to WHC's Keeping a Tenancy policy for further details.

If a tenant is in affordable housing funded under the National Rental Affordability Scheme (NRAS), the Australian Government specifies that when a tenant earns above the maximum income limit, they can then only continue to live in the premises for an additional 2 years.

#### **Where a tenant's income does not meet minimum eligibility requirements**

Where a tenant's income has reduced and they no longer meet the income threshold for an affordable housing property, WHC will discuss the options available to the tenant, including alternative housing options and their eligibility for a management transfer. WHC will assist the tenant as much as possible and will also refer the tenant to other agencies as appropriate.

### **3.3.3 Termination due to breach of the Residential Tenancy Agreement**

Termination and eviction is always considered as a last resort for WHC in relation to a breach of the tenancy agreement. WHC may seek termination of the lease through the NSW Civil and Administrative Tribunal (NCAT) where a tenant has engaged in behaviour that is in breach of the terms of the tenancy agreement, such as:

- Persistent nuisance and annoyance affecting neighbours and/or WHC staff, contractors and the staff or organisations that WHC has support partnerships with
- Continued non-payment of rent and water charges

- Continued living in cluttered or unsanitary conditions that pose a health threat to neighbours
- Unapproved pets or occupants in the property
- Sub-letting of the premises
- Unauthorised occupants residing at the property
- Illegal conduct being carried out in, or on, the premises

In general, WHC will work with a tenant to resolve any breach and allow them time to show that they can rectify the situation. If the tenant does not rectify the breach then WHC will:

1. issue a notice of termination to the tenant that will specify a date to vacate - if the tenant rectifies the issue before the date to vacate, then the notice of termination will be withdrawn
2. If the tenant does not rectify the issue by the date to vacate, then WHC will apply to the NSW Civil and Administrative Tribunal (NCAT) for a possession order. NCAT can then grant a possession order and set a date for termination and possession
3. If the tenant does not vacate by the date set by NCAT then WHC can apply for a warrant of possession from NCAT for a Sheriff to enforce and locks on the property may be changed at this stage.

Where a tenant's anti-social behaviour is seen to be as a result of mental health issues, WHC will refer them to a support or health agency for assessment and care. WHC will continue to provide the tenant with stable and secure housing whilst they receive medical care. However, if their anti-social behaviour becomes a criminal matter or poses a threat to the safety of others, WHC may seek termination of the lease.

Where WHC suspects that a tenant is sub-letting the premises, the tenant's subsidised rent will be terminated and market rent will be applied and charged until such time that an investigation is completed. On substantiation of the sub-letting, WHC will apply to NCAT for termination and possession and an order for repayment of rental arrears. If the sub-letting is not substantiated then the tenant will be repaid the additional amount of rent collected as a result of cancellation of the rent subsidy.

Where WHC suspects that an unauthorised additional occupant is residing at the premises, an investigation will be conducted. If the allegation is proven, the rental subsidy will be cancelled for the period that the unauthorised additional occupant resided at the premises.

Where WHC suspects that illegal activity is being conducted in the property, WHC will refer the matter to the Police and may seek immediate termination of the lease through the NSW Civil and Administrative Tribunal (NCAT).

### **3.3.4 Termination due to abandoned premises**

Where WHC suspects that a property has been abandoned as a result of:

- Advice from neighbours that a tenant has not been seen for at least 30 days
- Failure by the tenant to pay rent for at least 30 days, or rent arrears in excess of 30 days
- WHC being unable to contact the tenant after repeated attempts

- WHC being unable to establish the tenant's whereabouts through contact with next of kin, their emergency contact, or their support agency/ies
- WHC being unable to establish contact with the tenant after consultation with the Police or other authorities

WHC will seek termination of the tenancy agreement and seek possession of the property through the NSW Civil and Administrative Tribunal (NCAT). When granted possession, WHC will enter the premises, take an inventory of contents, post a 14 day notice of termination to the tenant at the premises, and send a copy to their next of kin, if they are known to WHC. WHC will allow their next of kin access to the property to remove all household effects.

If the next of kin does not remove the household and personal items from the property, then WHC will dispose of all items as per section 3.4 below, Abandoned Goods.

### **3.3.5 Termination due to the death of a tenant**

When WHC is advised of the death of a tenant, a 14 day notice of termination will be issued to the executor of the tenant's estate. The executor will be required to remove all possessions and return the keys to the property to WHC within 14 days. Where the executor fails to do this, WHC will seek an order from the NSW Civil and Administrative Tribunal (NCAT) for permission to remove all furniture and personal effects.

All furniture and household effects will be disposed of and any personal papers and memorabilia will be sent to the executor, in accordance with section 3.4 below, Abandoned Goods. Any portion of the tenant's bond that is not claimed by WHC will be returned to the tenant's estate.

## **3.4 Abandoned Goods**

Where a tenant has vacated a property but left goods in it, or abandoned the property, and the NSW Civil and Administrative Tribunal (NCAT) has granted a possession order to WHC, every attempt will be made by WHC to advise the tenant or their next of kin that they need to collect any goods and personal effects left in the property.

However, WHC cannot leave properties vacant for extended periods of time and will dispose of abandoned household items after the legal minimum of 14 days' notice has passed. During this 14 day period, WHC may also change the locks on the property. All furniture and clothing will be disposed of or donated to charity.

WHC will take an inventory of contents, note which items are being disposed of, and send reasonable amounts of personal papers and memorabilia to the tenant's next of kin, if they are known to WHC. If the tenant's next of kin is unknown or does not respond, then WHC will retain the personal items under secure conditions for 90 days. WHC may agree to extend this beyond the 90 days if the tenant, executor, or next of kin requests it. . Any pets found at the property will be left with the RSPCA or other animal shelter.

WHC is entitled to cover all of the costs of cleaning the property and packing up and disposing of all goods in the property from the tenant's bond.

### **3.5 Final Property Inspection**

All lease terminations require a final property inspection. The Property Condition Report that was completed at the start of a tenancy will be updated in relation to the condition of the property at the end of the tenancy. The tenant will always be invited to attend the property inspection which will occur as soon as possible after the last day of the lease period or when keys are returned.

Allowing for normal wear and tear the tenant will be held liable for any damage or non approved modifications made to the premises and they may lose a portion of bond that is required to rectify the modification or damage.

Where a property owner that WHC is leasing a property from has determined that the property has incurred damage other than normal wear and tear and has levied a claim against the bond, this charge will be claimed against the tenant's bond held by WHC.

Where the tenant has rent or other charges owing on the property, WHC will claim against the bond for the outstanding amount.

All returned bonds will be forwarded directly to the tenant from the Rental Bond Board at the advised tenant's forwarding address.

### **3.6 Moving to another WHC Property**

When a tenant moves from one WHC home to another under a management transfer, WHC may transfer the bond from one property to the other. A final property inspection will occur in accordance with this policy, and the balance of the bond after any claim has been lodged will be transferred to the new property. Refer to WHC's Keeping a Tenancy policy.

### **3.7 Outstanding Debts**

The costs associated with property damage, outstanding debts and rent arrears will be charged against any bond held at the Office of Fair Trading. Should the tenant's bond be insufficient to cover the outstanding charge, then WHC will invoice the tenant with the amount to be paid within 14 days of their termination date. Any unpaid amount may be pursued through the Local Court.

## **4 Complaints and Appeals**

### **4.1 Complaints**

Applicants and tenants that have received a service from WHC can lodge a complaint about that service if they do not think that WHC has followed its own policies or met its published standards. WHC staff can assist applicants and tenants to make a complaint about the service and stakeholders and community organisations can also lodge complaints.

WHC will manage all complaints in a fair and transparent way to ensure that the organisation's service delivery is responsive to concerns raised by tenants.

All complainants will receive a written response from WHC about the outcome of the investigation of their complaint within 21 working days. For further information see the Complaints and Appeals policy.

## 4.2 Appeals

If an applicant or tenant does not agree with a decision made by WHC, or thinks that the decision is unfair, then they can lodge an appeal against that decision. The basis of an appeal may include any of the following reasons:

- Inadequate consideration was given to their individual circumstances
- The decision involved an inadequate interpretation of WHC policy
- The decision was made contrary to the WHC policy
- The procedure used to reach the decision was not fair and correct

All appeals should be made to WHC in writing. WHC will then review the decision and will inform the applicant or tenant in writing about the outcome of the review within 21 days of receiving the appeal.

If the applicant or tenant does not agree with the outcome of WHC's review they can then lodge a second tier appeal to the Housing Appeals Committee (HAC). HAC can consider appeals about decisions made by WHC in relation to its own services or policies.

For more detailed information about how WHC manages appeals, see the Complaints and Appeals policy.

## 5 Privacy and Confidentiality Statement

The Women's Housing Company will ensure that all applicant and tenant information is kept confidential and will not release any personal information to a third party without the prior written consent or approval of the tenant or applicant, or unless where WHC is lawfully authorized or required to do so.

WHC will ensure that any personal and sensitive information is not collected, used, stored or disclosed other than for the proper purpose of its service. From time to time, de-identified demographic information may be released to third parties for statistical purposes only.