



## Ending a Tenancy

Policy Category	1. Tenancy	Policy Number	1.20
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### **Purpose:**

The purpose of this policy is to explain how Homes Out West (HOW) will end tenancies in accordance with the Residential Tenancies Act 2010. This policy applies to all HOW managed properties.

### **Policy:**

This policy covers ending a tenancy within the legal requirements of *the Residential Tenancies Act 2010 and Regulations*.

The policy operates from the perspective of supporting tenants to sustain their tenancies. All available options will be explored to assist tenants to sustain their tenancy however, it is recognised that there are situations whereby such options have been exhausted and taking NSW Civil and Administrative Tribunal (NCAT) action and eviction may be required.

HOW recognises there are several reasons tenancies may end. Some of these are voluntary, where the tenant indicates they wish to leave their tenancy and move into the private rental market, to relocate or in some circumstances due to domestic and family violence.

On other occasions it may be necessary for HOW to initiate ending a tenancy due to a leasehold property being taken back by the landlord, renovations, disposal or redevelopment. In these situations, HOW will issue a notice of termination in accordance with the *Residential Tenancies Act 2010* and commence the process of a Management Initiated Transfer. HOW will always provide a reason for ending a tenancy.

HOW may also initiate a termination of a tenancy where there is a breach of the *Residential Tenancies Act 2010*. Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing of the breach and given appropriate opportunities, support and assistance to rectify the issue and to sustain their tenancy.

When HOW issues a notice of termination, it will do so in accordance with the *Residential Tenancies Act 2010*, explaining the reason for the notice and providing the required timeframe for the tenant to vacate the premises.

Service Standards, Contractual requirements and Legislation	<u>National Community Housing Standards</u> 1.2 Establishing and Maintaining Tenancies 1.3 Changing needs of tenants 1.4 Ending Tenancies <u>National Regulatory System for Community Housing (NRSCH) Performance Outcomes</u> <ul style="list-style-type: none"> <li>• Performance Outcome1: Tenant and Housing Services</li> </ul> <u>Contractual requirements</u> <ul style="list-style-type: none"> <li>• NSW Community Housing Access Policy</li> </ul> <u>Legislation</u> <ul style="list-style-type: none"> <li>• Residential Tenancies Act 2010 (NSW)</li> <li>• Residential Tenancies Regulation 2010 (NSW)</li> <li>• Housing Act 2001</li> <li>• Community Housing Providers (Adoption of National Law) Act 2012 (NSW)</li> </ul>
Homes Out West Policies	<ul style="list-style-type: none"> <li>• Transfer</li> <li>• Complaints and Appeals</li> <li>• Death of a Tenant</li> <li>• Absence from Dwelling Policy</li> <li>• Succession Policy</li> <li>• Domestic and Family Violence Policy</li> </ul>
Housing Pathways Policies and Processes	<ul style="list-style-type: none"> <li>• Managing the NSW Housing Register Policy</li> <li>• Changing a Tenancy Policy</li> <li>• Ending a Tenancy Policy</li> <li>• Tenancy Policy Supplement</li> <li>• Transfer Policy</li> </ul>
Related documents	<ul style="list-style-type: none"> <li>• Notice to vacate form</li> <li>• Notice of termination</li> <li>• Checklist end of tenancy form</li> <li>• Application for Housing Assistance (AHA)</li> <li>• Transfer Supplement Community Housing Tenants Only</li> <li>• Evidence Requirements Information Sheet</li> <li>• Transfer Assessment form (HOW Internal)</li> <li>• Offer Checklist – Transfer &amp; Relocations</li> <li>• Complaints and Appeals form</li> </ul>

**Procedure and Guidelines:**

Reasons for ending a tenancy

A tenancy may be ended voluntarily by the tenant providing notice they are vacating the property, through tenant or management initiated transfers, the property is abandoned or the tenancy is terminated (with or without NCAT action).

There are many reasons why tenancies may end. The most common reasons are further explained below:

When a tenant wants to leave – ending a tenancy on a voluntary basis

Tenants are required to give written notice to HOW when they decide to leave their tenancy. The minimum notice required is 21 days for a periodic agreement. The minimum notice for a fixed term agreement is 14 days, taking effect on or after the end

of the fixed term. Requirement to adhere to these timeframes may be waived if authorised by the CEO and one other Executive Team member in special circumstances that would cause financial hardship or other disadvantage to the tenant and in the case of presence of Domestic and Family Violence (See Domestic and Family Violence Policy).

The tenant will receive confirmation in writing that their notice to terminate the tenancy has been received with the agreed date for the final vacate inspection, the amount of money due to the vacate date and a copy of the Checklist End of Tenancy form. The rent will cease to be charged once keys have been returned for the property.

A tenant may withdraw a notice to vacate at any time.

#### *When a landlord terminates a leasehold tenancy*

Where a tenancy agreement is legally terminated by the landlord of the leasehold property and the end of the tenancy is not due to the actions of the tenant, HOW will pass on the notification of termination to the tenant and assist the transfer of the tenant to another suitable property.

#### *Transitional (temporary) housing tenancies*

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. HOW and the support provider explain at the start of the tenancy that the tenancy is for a fixed term and that a notice of termination will be issued to coincide with the last day of the transitional tenancy. Both the support agency and HOW will assist the tenant to locate long term accommodation.

The Housing Pathways application for these tenants remains live on the NSW Housing Register in recognition of the temporary nature of these tenancies.

#### *Relinquishing a tenancy*

A tenant may relinquish or be asked to relinquish their tenancy when they are unable to continue living in their property. This will be when the tenant has gone into long term care, rehabilitation or other institutional care, or prison for more than three months in line with HOW's Absence from Dwelling Policy and Succession Policy.

In these situations, the tenant will receive confirmation that their tenancy has ended and where appropriate will be given information on the circumstances in which a tenancy can be reinstated.

#### *Transfer and mutual exchange*

When a tenant is approved for a transfer or mutual exchange, their existing tenancy will be terminated. The tenant will need to sign a new Residential Tenancy Agreement before moving into another property.

#### *Termination and possession proceedings for a breach of the Residential Tenancy Agreement*

Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given appropriate opportunities, support and assistance to rectify the issue.

Where there is a serious breach and/or a series of breaches and the tenant does not rectify the breach/es, it may be necessary to proceed with action for termination of the agreement and possession of the premises. This action will involve an application for a hearing at NCAT according to the *Residential Tenancies Act 2010* and *Regulations*.

#### *Section 85 – No Grounds Termination Notice*

HOW has committed to refrain from issuing No Grounds Termination Notices under Section 85 of the RTA as this is in conflict with the intention of community housing.

#### Abandonment

Where a tenant has abandoned the property, HOW can apply to NCAT for an order declaring that the premises are abandoned and if successful, take possession of the premises.

Where HOW believes the property has been abandoned, HOW may also take possession of the premises without NCAT action, with the approval of the CEO and one other Executive Team member. HOW will comply with the requirements of the Residential Tenancy Act 2010 in regards to notice, storage and disposal of tenants' goods left in the property.

#### Death of a sole tenant

Where a sole tenant has died, HOW will liaise with the tenant's next of kin and /or legal representative to organise the return or removal of the tenant's goods and to end the tenancy. Confirmation that the tenancy has ended will be sensitively provided to the next of kin and / or the legal personal representative (refer to Death of a Tenant Policy).

In circumstances where the tenant has no family or support, the tenancy can be ended immediately. Confirmation that the tenancy has ended will be sent to the estate of the tenant.

Succession of a tenancy, where there has been the death of a sole tenant, will be in accordance with HOW's Succession Policy.

#### Property is uninhabitable or destroyed

When a house becomes uninhabitable due to flood, fire or other causes, termination of the tenancy takes immediate effect. HOW would assist in transferring the tenant to another suitable property.

#### End of tenancy process

At the end of the tenancy, a final vacate inspection will be done on the property. If there is damage or cleaning that must be completed, the tenant must be given the opportunity to go back and rectify the situation. If contact cannot be made with the tenant within 48 hours of the vacate inspection, then HOW may organise the repairs/cleaning as necessary. Should the tenant opt to rectify the situation they will be charged their usual rent for the days that they have the keys to the property.

At the completion of any repairs/cleaning, a letter outlining all outstanding amounts will be supplied to the tenant along with a copy of all invoices. HOW will make an application to NCAT for a Compensation Order to recognise any amount owing over \$1500 as an outstanding tenant debt. All amounts of outstanding tenant debt will be recorded against the tenant file in the HOW tenancy management system and in HOMES.

#### Complaints and appeals

If a tenant is dissatisfied with a service provided by HOW or a decision made by HOW they can lodge a complaint, appeal the decision (refer Complaints and Appeals Policy) or apply to NCAT (if applicable).