

Renovation, Replacement or Demolition of Public Housing

Policy

Date effective: 01 April 2021

1. Purpose

This policy outlines how a tenancy will be terminated for the purpose of renovation, replacement or demolition of public housing, and the relocation of tenants in public housing as set out in Part 15, Division 2 of the *Residential Tenancies Act 1999* (RTA).

2. Objectives

The objectives of this policy are to:

- Provide clear processes for terminating tenancies for the purpose of renovation, replacement and demolition of public housing;
- Support the financially and administratively efficient upgrade of public housing premises.
- Ensure households are not made homeless while public housing premises are being renovated, replaced or demolished.
- Not financially burden or disadvantage households.
- Ensure compliance with relevant legislation.

3. Scope

This policy applies to public housing tenants with Tenancy Agreements entered into from 1 March 2000. This policy does not apply to tenants in social housing head-leased premises, government employee housing or industry housing.

4. Definitions

- Displaced** means a tenant is removed from their premises without acceptable Transitional Accommodation being available or accessible.
- Essential Services** means electricity, sewerage and potable water.
- Homeless/Sleeping Rough** means being without access to an adequate premises, including lack of:
- Shelter [“rooflessness”] e.g. in a park or in a motor vehicle

- Security of tenure in a premises; or
- Access to space for social relations, for example overcrowded houses.

Occupier	means the recognised occupiers listed on the tenancy agreement, or who have otherwise been agreed as occupiers of the premises by the tenants and the CEO (Housing), and whose principle place of residence is the premises.
Overcrowded	means a household that requires one or more extra bedrooms to meet the needs of the household based on size and composition. The standard is based on the Canadian National Occupancy Standard and relates to usual residents; it does not include visitors.
Renovation, replacement or demolition	means works that include one or more of the following: a) the partial or total demolition of a premises; b) the renovation of all or part of a premises, including the addition of extra bedrooms or living spaces; or c) the refurbishment of all or part of a premises to improve the amenity of the premises, during which the premises would be unfit for habitation.
Tenant	means those occupants who have signed the tenancy agreement
Transitional Accommodation	means an alternative and temporary place for tenants to live while the public housing premises they usually reside in is upgraded or replaced.
Transitional Accommodation Agreement	means an agreement between the CEO (Housing) and a tenant for the purposes of Transitional Accommodation. The Agreement is not bound by the <i>Residential Tenancies Act 1999</i> as rent is not payable in return for the granting of a right to occupy premises for the purpose of residence.
Undertaking to enter into a new Tenancy Agreement	means a legally enforceable commitment from the CEO (Housing) to enter into a new tenancy agreement.

5. Policy detail

A tenancy may be terminated under Part 15, Division 2 of the RTA if renovation, replacement or demolition of a public housing premises is required.

5.1. Termination for Renovation, Replacement or Demolition

Where the CEO (Housing) identifies a premises for renovation, replacement or demolition works, the existing tenancy agreement for the premises will be terminated to provide the CEO (Housing) with vacant possession of the premises in order to carry out the required works. Termination of a tenancy agreement must be in accordance with section 139 of the RTA.

This termination does not permanently end the relationship between the CEO (Housing) and the tenants and occupiers. Security of tenure is provided through an undertaking to enter into a new tenancy agreement with the tenant or occupier of the premises.

Prior to terminating a tenancy for the purposes of renovation, replacement or demolition of public housing premises, the CEO (Housing) must:

- Take reasonable steps to consult and inform the tenant or occupier about:
 - the renovation, replacement or demolition of the premises;
 - the process for termination of the tenancy agreement; and
 - the transitional accommodation being offered.
- Provide an undertaking to the tenant or occupier to enter into a new tenancy agreement.
- Make available transitional accommodation (if required).
- Reach an agreement on a date for vacant possession of the premises.
- Give a notice of intention to terminate to the tenant or occupier of the premises.

5.1.1. Consultation

The CEO (Housing) will take reasonable steps to consult with the tenants or occupiers during the process of planning any renovation, replacement or demolition works.

Consultation commences when a tenant is engaged in discussions about works proposed to a premises. During the initial discussion, the tenant will be consulted in relation to:

- the type of works proposed for the premises;
- any requirements to relocate to transitional accommodation to facilitate the works;
- transitional accommodation options;
- the relocation costs which will be covered by the CEO (Housing);
- the process for termination of the tenancy agreement, including the tenants right to possession of the premises until the date the transitional accommodation is available;
- The options available to the tenant in relation to repayment or transfer of a security deposit.

During the initial discussion, tenants will be informed of their right to seek legal advice, and provided with contact details for legal service providers. Tenants will be invited to have any support persons present that they need. Interpreters must also be used when available.

Multiple follow up discussions may be required to finalise plans for works to the premises.

After the works plans have been confirmed with the tenant, representatives of the CEO (Housing) will maintain contact with the tenant and keep them informed on the progress of procurement activities, noting that several months may pass between agreeing on the plans and the next discussion on termination of the tenancy agreement, transitional accommodation and relocation costs.

Once the procurement has been completed for the works to the premises, the tenant will be consulted to confirm timing of the works, transitional accommodation arrangements, relocation costs to be covered by the CEO (Housing) and the processes for termination of the tenancy agreement.

Every effort will be made to reach agreement with the tenant on the date of termination of the tenancy and the preferred transitional accommodation option, insofar as the requests are reasonable and within the scope of what can be facilitated. Where agreement cannot be reached, the works program for the dwelling may not be able to proceed as a tenancy agreement cannot be terminated under section 139 of the RTA unless a date for vacant possession has been agreed and an offer of transitional accommodation acceptable to the tenant has been made.

5.1.1.1 Where tenants cannot be reached

In some instances, the tenant may not be contactable, or may no longer be residing in the premises. In these instances, where all reasonable efforts to contact the tenant have been unsuccessful, negotiations may be conducted with the occupiers.

Where tenants are not residing in the premises at the time of consultation, measures to be taken to contact the tenant can include house visits, phone, text, email and mail (if available). If this is unsuccessful, additional measures may be required including contacting family and neighbours, speaking with any remaining occupiers and seeking advice from Housing Reference Groups in remote communities. Where possible, messages should be left in the first language of the tenant through the use of an interpreter as required or where available.

5.1.2. Security Deposit (Bond) Transfer

Tenants who have paid a security deposit (bond) at the start of a tenancy for a premises may consent to the CEO (Housing) holding the money paid as a security deposit in trust to transfer to a new tenancy agreement to be entered into with the tenant.

Where the tenant does not consent to the bond money being held in trust, the CEO (Housing) will return the money to the tenant in accordance with section 112 of the RTA.

If any tenants or occupiers, who are no longer residing in the premises, have paid a portion of the bond, this must be returned to them or managed in accordance with section 116 of the RTA.

If a tenant is unable to be located or consulted, and the tenancy agreement is terminated following consultation with the occupier, the security deposit will not be transferred and will be managed in accordance with the requirements under the section 116 of the RTA.

5.2. Transitional accommodation

Where the tenants or occupiers need to move out to facilitate the renovation, replacement or demolition works, transitional accommodation that is appropriate and meets the needs of the household will be offered. The tenant retains the right to refuse this offer and make their own accommodation arrangements.

If a tenant does not accept the transitional accommodation offered, and if no other suitable alternative transitional accommodation options are available, the works will not proceed.

A Transitional Accommodation Agreement must be entered into where tenants accept transitional accommodation offered. There is no rent or bond payable for transitional accommodation.

5.2.1. Acceptable transitional accommodation

Types of accommodation which are considered acceptable transitional accommodation options are:

- Vacant public housing premises located in the same region as the original premises.
- Vacant transportable accommodation (e.g. demountable or donga).
- Commercial accommodation (e.g. motel, hostel, lodge).

Tenants may also choose to make their own personal arrangements, including lodging with family or friends or staying on a homeland.

Where tenants make their own personal accommodation arrangements, the CEO (Housing) should ensure the option does not displace tenants or make tenants homeless throughout the duration of renovation or replacement works.

5.2.2. Unacceptable transitional accommodation

Unacceptable transitional accommodation options are:

- Any option that contributes to overcrowded conditions.
- Any transitional accommodation that provides less bedrooms than the premises being upgraded or replaced, unless the household can be safely accommodated in the smaller transitional accommodation.
- Tents or 'sleeping rough.'
- Improvised premises or structures without essential services.
- Any option that is culturally inappropriate or unacceptable to the tenant or other affected parties.

5.3. Moving costs

The CEO (Housing) will pay the reasonable expenses of the tenant or occupier for the move to the transitional accommodation premises and to the renovated or new premises. In some instances, a tenant may be moved directly into a new premises and not require transitional accommodation. The CEO (Housing) will cover reasonable moving costs for the household in these cases.

The CEO (Housing) will consult with the tenant and evaluate transitional accommodation options and relocation costs as part of any offer for transitional accommodation.

In the event that the tenant becomes aware of damage to personal belongings as part of the relocation, the tenant is to direct any claims for compensation to the CEO (Housing) within 30 days.

5.4 Right to Possession

To allow efficient management of renovation, replacement and demolition programs, taking into account construction schedules, availability of transitional accommodation and other locational factors, terminations under Part 15, Division 2 of the RTA provide some flexibility in the date of vacant possession.

Prior to issuing a notice of intention to terminate, the CEO (Housing) and the tenant or occupier must agree to a date of vacant possession of the premises. However, if the transitional accommodation is not available on this date, tenants and occupiers can remain in the premises until the date the transitional accommodation is available.

5.5 Undertaking to enter into a tenancy agreement

The CEO (Housing) must provide tenants (and their occupants) with a written undertaking to enter into a new tenancy agreement as part of the notice of intention to terminate.

The undertaking is in the form of a Deed to provide tenants (and their occupiers) with an undertaking to enter into a new residential tenancy agreement and for the return and occupation of the new or renovated premises upon the completion of works.

Before signing the undertaking, an explanation is required along with an explanation of the new terms of the tenancy agreement that will be annexed to the undertaking. Although a Deed only requires the CEO (Housing) to sign such an undertaking, it is practically beneficial that tenants and their occupants also sign the undertaking to evidence the receipt of the undertaking.

5.6 Commencement of new tenancy agreement

Following completion of the works a new tenancy agreement will be entered into between the CEO (Housing) and the tenant or occupiers in accordance with the Allocation and Commencement of a Tenancy and Tenancy Agreement policies.

The household can determine the signatories (tenants) for the new agreement. Signatories do not need to be the same as for the previous agreement. However, the security deposit can only be transferred if a tenant on the previous agreement is to remain a tenant on the new agreement.

If the signatories to the previous tenancy agreement are no longer living in the premises and were unable to be located, despite all reasonable attempts by the CEO (Housing) to contact them, a new tenancy agreement can be entered into with previous occupiers.

The occupier will become the new tenant and will be required to pay a bond as part of entering into the new tenancy agreement.

6. Discretionary decision making

The Chief Executive Officer (Housing) may delegate a power or function under the *Housing Act 1982* or other Act. Delegated officers may make decisions on behalf of the Chief Executive Officer (Housing) in line with the CEO (Housing)'s Housing Delegations and Financial Management Delegations.

A discretionary decision may be made outside the general application of policy if it supports the policy intent, will prevent a client from being unfairly disadvantaged, and is in line with the CEO (Housing)'s delegations and legislative obligations. Refer to the Discretionary Decision Making policy.

7. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the CEO (Housing), they can access the CEO (Housing)'s complaints and/or appeals processes. For further information, please refer to the Complaints and Appeals policies.

8. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly.

9. References

9.1. Legislation

Housing Act 1982

Residential Tenancies Act 1999

9.2. Policies

Allocation and Commencement of a Tenancy policy

Appeals policy

Complaints policy

Discretionary Decision Making policy

Tenancy Agreement policy

Termination of a Tenancy policy

10. Document change control table

Release date	Version number	Approved by (position)	Section amended	Category
1 April 2021	1.00	CEO (Housing)	All	New