

Termination of a Tenancy

Policy

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For tenancies entered into a tenancy agreement before 16 June 2022.

Coronavirus (COVID-19) modifications in place:

Terminations without grounds

The *Residential Tenancies COVID-19 Modification Notice 2020* extends timeframes for landlord terminations not relating to a breach of a tenancy agreement as below:

- A periodic tenancy agreement may be terminated under section 89 of the *Residential Tenancies Act 1999* by 60 days notice in accordance with section 101(1), under section 19 of the *Residential Tenancies COVID-19 Modification Notice 2020*.
- A fixed term tenancy agreement may be terminated under section 90 of the *Residential Tenancies Act 1999* by 60 days notice in accordance with section 101(1), under section 20 of the *Residential Tenancies COVID-19 Modification Notice 2020*.

Terminations for non-payment of rent

- The *Residential Tenancies COVID-19 Modification Notice 2020* extends timeframes for tenants who are in financial hardship due to COVID-19 to rectify arrears.
- Where a tenant has notified the Department of COVID-19 hardship and is in breach of the tenancy agreement for non-payment of rent, the Department can issue a notice to remedy breach if the rent has been in arrears for 60 days or more, in line with section 23 of the *Residential Tenancies COVID-19 Modification Notice 2020*. If the breach is not remedied within 60 days after the notice is given, the Department can apply to the Northern Territory Civil and Administrative Tribunal to terminate the tenancy.

1. Purpose

This policy outlines how and when a public housing tenancy can be ended, considering the needs of the client alongside the Chief Executive Officer (Housing) (CEO (Housing)) aim to support eligible households for the duration of their need.

2. Objectives

The objectives of this policy are to ensure:

- Public housing tenancies are ended in a fair, transparent, equitable, and client centred manner.
- No household is transitioned out of public housing into homelessness.
- Compliance with relevant legislation.

3. Scope

This policy applies to all public housing tenancies.

4. Policy detail

A tenancy ends when:

- The tenant or the CEO (Housing) terminates the tenancy.
- The Northern Territory Civil and Administrative Tribunal orders a termination of the tenancy.
- The premises is abandoned by the tenant.

- A sole tenant dies.
- A person with superior title to the landlord's title becomes entitled to possession of the premises.
- The Local Court orders a termination of a tenancy.

All public housing tenancies must be terminated in accordance with the relevant legislation. For tenancy agreements which commenced from 1 March 2000, the *Residential Tenancies Act 1999* applies. Where a tenancy agreement commenced before 1 March 2000, the *Tenancy Act 1979* applies.

4.1. Termination by either the tenant or the CEO (Housing)

4.1.1. If premises flooded, unsafe or uninhabitable

Under the *Residential Tenancies Act 1999*, either the tenant (section 92) or the CEO (Housing) (section 86) may terminate a tenancy by two days notice in writing if:

- access to the premises has not been available for more than three days because of flooding; or
- continued occupation of the premises by the tenant is a threat to the health or safety of the tenant or members of the public or a threat to the safety of the CEO (Housing)'s property; or
- the premises have become uninhabitable.

The CEO (Housing) will ensure tenants have appropriate accommodation if required to vacate at short notice. If the deterioration of the premises was not due to a breach of the tenancy agreement, the tenant will be offered a transfer to another public housing premises, or to return to the premises once repaired. Refer to the Public Housing Transfers policy.

4.2. Termination by the tenant

A tenant may terminate their tenancy to:

- leave public housing;
- transfer to other public housing premises (including approved house swaps); or
- give up possession of premises with the CEO (Housing)'s consent for a period of up to 12 months and be allocated another premises on their return (refer to the Relinquishment policy for more information).

Notice must be in writing and signed by the tenant in accordance with section 101(2) of the *Residential Tenancies Act 1999*. If there is more than one signatory to the tenancy agreement, the notice must be signed by each signatory.

4.2.1. Without grounds

A tenant may terminate their tenancy agreement without specifying grounds by giving notice in accordance with section 101(2) of the *Residential Tenancies Act 1999* with:

- 14 days notice for a periodic tenancy agreement (section 94); or
- 14 days notice prior to the end of a fixed term tenancy agreement (section 95).

4.2.2. Give up possession with consent

A tenant may give up possession of their premises by providing notice in accordance with section 101(2) of the *Residential Tenancies Act 1999* with the consent of the CEO (Housing) under section 82(1)(f) of the *Residential Tenancies Act 1999*.

If a tenant seeks to give up possession with the CEO (Housing)'s consent, consent will not be withheld by the CEO (Housing). The CEO (Housing) will seek to understand where the tenant intends to go and, where required, provide accommodation referrals to avoid exits into homelessness.

4.3. Termination by the CEO (Housing)

4.3.1. Drug premises order made

The CEO (Housing) may terminate a tenancy with 14 days notice under section 88A of the *Residential Tenancies Act 1999* where a drug premises order is in force under the *Misuse of Drugs Act 1990*. The 14 days notice must be in accordance with section 101(1) of the *Residential Tenancies Act 1999*. Refer to the *Illegal Use of a Dwelling* policy for more information.

4.3.2. Household no longer eligible for public housing

The CEO (Housing) provides public housing to those most in need, for the duration of that need. To ensure that public housing is available to help eligible Territorians in need, if a tenant is no longer eligible:

- a periodic tenancy agreement may be terminated under section 89 of the *Residential Tenancies Act 1999* by 42 days notice in accordance with section 101(1); or
- a fixed term tenancy agreement may be terminated under section 90 of the *Residential Tenancies Act 1999* with 14 days notice prior to the end of the fixed term in accordance with section 101(1).

The CEO (Housing) will aim to ensure that no household is transitioned out of public housing into homelessness. As each household has different circumstances, the CEO (Housing) will work closely with affected tenants to identify alternative housing options.

4.3.3. House swaps

In some cases, tenants may have moved between public housing premises without prior approval from the CEO (Housing) (i.e. a 'house swap'). Where tenants do not have a tenancy agreement for the premises they are living in, the CEO (Housing) will work to ensure that any existing tenancy agreements with previous tenants are lawfully terminated. This will allow occupants to enter into a new tenancy agreement for the premises they are residing in providing they are eligible for public housing and the premises matches their entitlement.

Refer to the *Public Housing Transfers* policy, *Eligibility for Public Housing* policy and the *Tenancy Agreements in Public Housing* policy for more information.

4.3.4. Abandoned premises

In some instances a tenant will vacate a premises without informing the CEO (Housing). Where the CEO (Housing) has reason to believe a premises has been abandoned and rent is outstanding, the premises may be deemed as abandoned under section 108 of the *Residential Tenancies Act 1999*.

If rent is still being paid, or if there is doubt as to whether the premises has been abandoned, the CEO (Housing) will apply to the Northern Territory Civil and Administrative Tribunal to have the premises declared abandoned.

4.3.5. Renovation, Replacement or Demolition of public housing premises

Under Part 15, Division 2, section 138 of the Residential Tenancies Act 1999, the CEO (Housing) may terminate a tenancy agreement if the CEO (Housing) requires vacant possession of the premises for the purpose of renovation, replacement or demolition.

The (CEO Housing) will offer the tenant, without charge, transitional accommodation in accordance with section 140 of the Residential Tenancies Act 1999 and will pay the reasonable expenses of the tenant to move to the transitional accommodation and subsequent move to the renovated premises or new premises.

The CEO (Housing) will terminate the tenancy pursuant to section 139 of the *Residential Tenancies Act 1999* providing the following have been met:

- There has been consultation with the tenant regarding the renovation, replacement, or demolition of the premises;
- The CEO (Housing) has given the tenant a notice of intention to terminate;
- The CEO (Housing) has undertaken to enter into a new tenancy agreement with the tenant for either return to the renovated premises or occupation of a new premises;
- The offer of transitional accommodation is accepted by the tenant; and

The CEO (Housing) and the tenant have agreed to a date for vacant possession of the premises.

4.3.6. Relocating a tenant in public housing

The CEO (Housing) may terminate a tenancy agreement and relocate a tenant to other accommodation under Part 15, Division 3, Section 144 (1) of the *Residential Tenancies Act 1999* for the following reasons:

- The premises have more bedrooms than the tenant needs and the other accommodation would have a suitable number of bedrooms; or
- The premises do not meet the social, physical, psychological or medical needs of the tenant and the other accommodation would be better suited to those needs; or
- The premises or neighbours pose a risk to the health or safety of the tenant and the other accommodation would be safer.

The CEO (Housing) may also terminate a tenancy agreement and relocate the tenant to other accommodation under Part 15, Division 3, Section 144 (2) of the *Residential Tenancies Act 1999* where the tenant has engaged in the following:

- unacceptable conduct as specified in section 100(1)(a),(b) or (c) of the *Residential Tenancies Act 1999*; or
- antisocial behaviour specified in section 28A of the *Housing Act 1982*.

4.4. Termination by the Northern Territory Civil and Administrative Tribunal

Either the tenant, the CEO (Housing) or an interested person can apply to the Northern Territory Civil and Administrative Tribunal to terminate a tenancy.

4.4.1. Application by tenant

The *Residential Tenancies Act 1999* provides for tenants to apply to the Northern Territory Civil and Administrative Tribunal to terminate a tenancy for:

- Serious breach by landlord (section 98).
- Hardship (section 99).
- Failure to remedy breach after notice given (section 100A(2)).

While tenants are able to seek termination in this manner, it may not be necessary to make an application. The CEO (Housing) will not withhold consent for a tenancy to end without notice should a tenant choose to give up possession of the premises (refer to section 4.2.2 of this policy).

4.4.2. Application by the CEO (Housing)

The CEO (Housing) will only seek to terminate a tenancy for an eligible household as a last resort and will work with the tenant to meet their responsibilities under their tenancy agreement. Where the tenant has breached the tenancy agreement, it is the CEO (Housing)'s preference that any breach is remedied so that the tenancy can continue. Refer to the Tenancy Agreement Breach policy for more information on the CEO (Housing)'s approach to breaches of public housing tenancy agreements.

The CEO (Housing) will only apply to the Northern Territory Civil and Administrative Tribunal to terminate a tenancy for a breach where a tenant has seriously or repeatedly breached the terms of the tenancy agreement, in accordance with Division 4 of the *Residential Tenancies Act 1999*. The Tribunal can make an order for repossession of the premises.

Grounds for termination include:

- Serious breach by tenant (section 97).
- Failure by tenant relating to an acceptable behaviour agreement (section 99A).
- Conduct of tenant unacceptable (section 100).
- Failure to remedy breach after notice given, including for failure to pay rent (section 100A).
- Abandoned premises (section 108).

Refer to the Acceptable Behaviour Agreement policy, Red Card policy or Debt Management policy for further information.

4.4.3. Application by an interested person

The CEO (Housing) will be notified and given an opportunity to be heard by the Northern Territory Civil and Administrative Tribunal, if an interested person makes an application to have a public housing tenancy terminated under the *Residential Tenancies Act 1999*, section 100 (Conduct of a tenant unacceptable).

4.4.4. Superior title

Under section 82(d) and section 107 of the *Residential Tenancies Act 1999*, the CEO (Housing)'s role as a landlord may end and a person with superior title (meaning a person with a better right of ownership over the premises) may become the landlord. This may happen where the CEO (Housing) manages housing under a lease arrangement, for example in a remote community or under the social housing head-leasing program.

The CEO (Housing) will advise tenants if there is a change to their landlord.

4.5. Death of a tenant

The CEO (Housing) recognises that the death of a tenant can be a difficult and emotional time for other residents and/or family members. The CEO (Housing) does not require a copy of the death certificate or written advice of the death. The CEO (Housing) may independently verify that the death has occurred to ensure that a tenancy is not wrongfully terminated.

4.5.1. More than one signatory to the tenancy agreement (joint tenancy)

Where more than one person has signed the tenancy agreement and one signatory dies, the tenancy continues with the remaining signatories to the tenancy agreement. Where the size of the premises no longer matches the household's entitlement, the household may be considered for transfer to other public housing premises, but not within six months following the death of a tenant. Refer to section 4.3.2 of this policy, if the household is no longer eligible for public housing and section 4.3.6 of this policy if the remaining household members are required to relocate to a premises which matches their entitlement.

4.5.2. One signatory to the tenancy agreement (sole tenant)

Under section 82(2) of the *Residential Tenancies Act 1999*, if a sole tenant dies, the tenancy is terminated.

If the death of a sole tenant results in dependent children remaining unsupervised in the premises, CEO (Housing) will immediately notify Territory Families, Housing and Communities.

Where the death of a sole tenant leaves recognised occupiers in the premises, the CEO (Housing) will offer a new tenancy agreement to recognised occupiers if they are eligible for public housing. The CEO (Housing) has discretion to offer a new tenancy agreement to occupants who are not recognised occupiers if they are eligible for public housing and have been ongoing members of the household (i.e. not a temporary visitor).

Where the size of the premises no longer matches the household's entitlement, the CEO (Housing) may offer a six month fixed term tenancy agreement for the current premises. The household may be requested to transfer to other public housing premises at the end of the fixed term tenancy agreement. Refer section 4.3.5 of this policy and the Transfers within Public Housing policy.

Where occupants are not eligible to remain in public housing following the death of a sole tenant, the CEO (Housing) will allow up to six weeks for occupants (including dependent children, if this is managed by Territory Families, Housing and Communities) to arrange alternative accommodation. The CEO (Housing) will allow up to six weeks for an executor or administrator of the deceased's estate to make arrangements for personal belongings left at the premises. No rent is charged during this period.

4.6. Termination by the Local Court

Under section 23 of the *Domestic and Family Violence Act 2007*, under a Domestic Violence Order, the Local Court may make an order:

- terminating the tenancy agreement: or
- terminating the tenancy agreement and creating a new tenancy agreement for the benefit of the protected person and anyone else who was a party to the terminated agreement: or

Terminating the tenancy agreement and creating a new tenancy agreement for the benefit of the defendant and anyone else who was a party to the terminated agreement.

5. Outgoing condition report

An outgoing condition report may be completed within three business days after the tenant gives up vacant possession of the premises. The tenant must be invited to attend the outgoing inspection. See the Inspections policy for more details.

The CEO (Housing) may offer a pre-vacate inspection to the tenant, to determine whether any cleaning and/or maintenance is necessary, however the tenant is not obliged to accept it.

The CEO (Housing) may complete a condition report within three business days after forming the opinion that a tenant has apparently abandoned the premises.

6. Security deposit (bond)

The tenant is entitled to have the security deposit (bond) returned to them at the end of the tenancy, less any amount the CEO (Housing) is entitled to retain.

At the end of a tenancy, the CEO (Housing) will validate any tenancy related charges in accordance with the Debt Management policy. The bond (or part of it) may be retained by the CEO (Housing) to pay tenancy related charges owed in accordance with section 112 of the *Residential Tenancies Act 1999*.

6.1. Transfer of Security deposit (bond)

If the CEO (Housing) terminates a tenancy under Part 15, Division 2 of the *Residential Tenancies Act 1999*, the tenant can choose to either have the money they have paid as a security deposit returned to them, or consent to the CEO (Housing) retaining the money in trust as a security deposit under the new tenancy agreement.

If the CEO (Housing) terminates the tenancy agreement under Part 15, Division 3, the tenant is not entitled to have the security deposit returned. The *Residential Tenancies Act 1999* enables the CEO (Housing) to retain any security deposit previously paid by the tenant as a security deposit under the tenancy agreement for the new accommodation, less any amount the CEO (Housing) is entitled to retain.

The above situations are the only circumstances that allow for the transfer of the security deposit. For all the other terminations the security deposit cannot be transferred and must be dealt with under Section 112 of the *Residential Tenancies Act 1999*.

7. Decision-making (delegation and discretion)

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

No discretion can be applied to the timeframes and notification requirements for terminations under the *Residential Tenancies Act 1999*. Discretion can be applied to timeframes for occupants to vacate a premises following the death of a sole tenant, and to offer a tenancy agreement to occupants who are not recognised occupiers.

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.

8. 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) complaints and/or appeals processes. For further information, please refer to the Complaints and/or Appeals policies.

9. 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.

10. References

10.1. Legislation

Domestic and Family Violence Act 2007

Housing Act 1982

Misuse of Drugs Act 1990

Residential Tenancies Act 1999

Residential Tenancies COVID-19 Modification Notice 2020 (Northern Territory Government Gazette No. S28, 28 April 2020)

Residential Tenancies COVID-19 Modification Notice Amendment 2020 (Northern Territory Government Gazette No. S29, 11 May 2020)

Residential Tenancies COVID-19 Modification Notice Amendment (no. 2) 2020 (Northern Territory Government Gazette No. S32, 4 June 2020)

Tenancy Act 1979

10.2. Policies

Acceptable Behaviour Agreement policy

Appeals policy

Complaints policy

Debt Management policy

Discretionary Decision Making policy

Eligibility for Public Housing policy

Entitlement policy

Illegal Use of a Dwelling policy

Red Card policy

Renovation, Replacement or Demolition of Public Housing

Tenancy Agreement Breach policy

Tenancy Agreements for Public Housing policy

Transfers within Public Housing Policy