



Terminations of Residential Tenancies in NSW and How to Challenge Them.

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Acknowledgement of Country

Today's Session

1. The Termination and Eviction Process
2. Termination by a Landlord - how to challenge
4. Social Housing
5. Termination by a Tenant
4. Unlawful lockouts
5. Questions and where to get help

Resources: www.rlc.org.au/training/evictions

1. The Termination And Eviction Process



The Termination and Eviction Process

Landlord Terminates:

This is the ONLY legal way that a tenant can be evicted:

1. Notice of termination
2. Application to NCAT - NSW Civil and Administrative Tribunal
3. NCAT hearing
4. NCAT orders termination and possession
5. NCAT issues warrant for possession
6. Office of NSW Sheriff executes warrant for possession; locks are changed

The Termination and Eviction Process

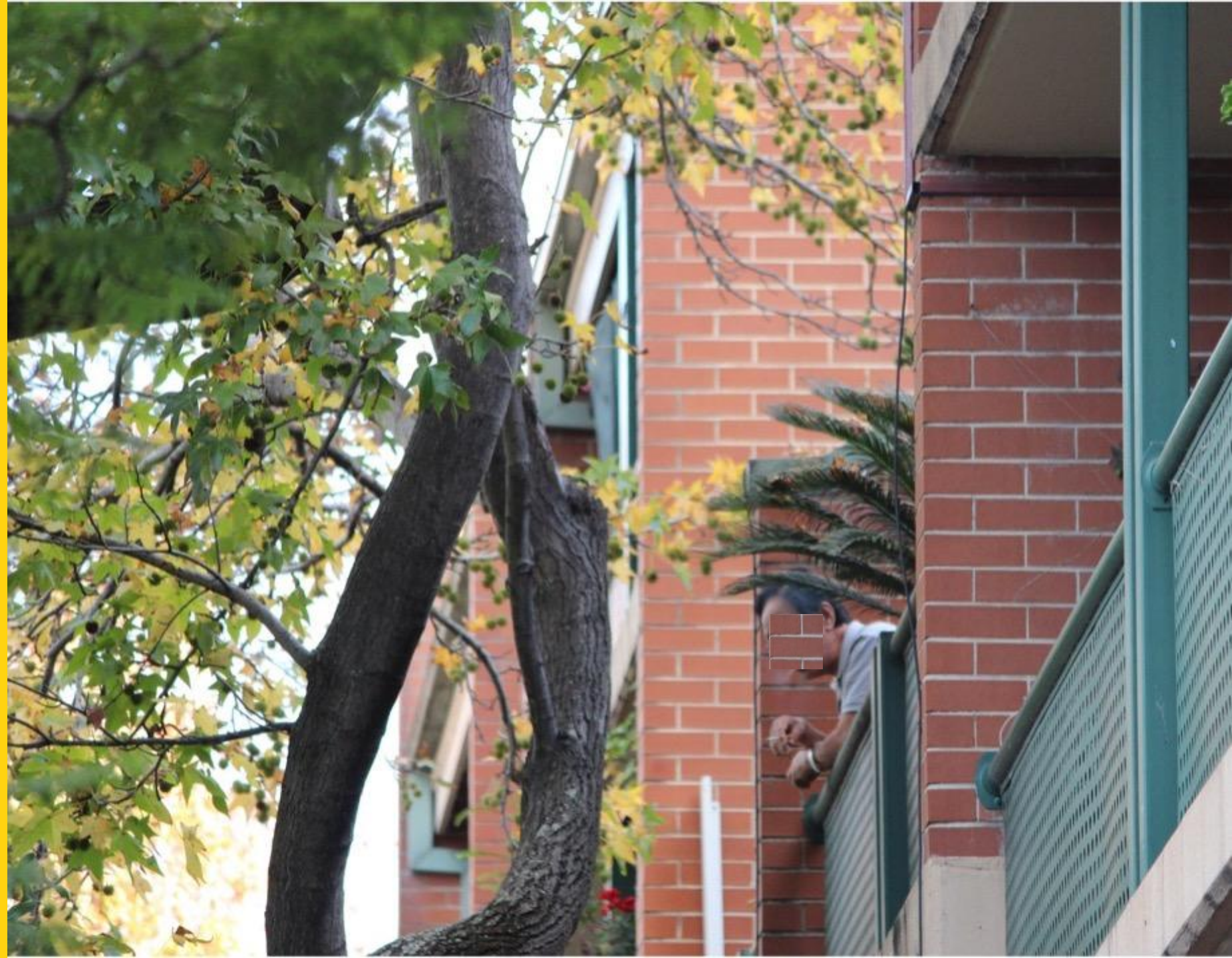
Tenant Terminates:

In most cases, there is not a Tribunal process for a tenant to terminate their tenancy

Once the tenant moves out and hands back the keys, the tenancy is terminated

Tenants usually need to give a notice of termination or take some other steps before moving out to avoid paying a 'break fee'.

2. Termination by a landlord



1. Notice of Termination

TENANTS DO NOT HAVE TO MOVE OUT on the date on the notice of termination

A notice of termination does not end the tenancy

A notice of termination does not authorise a landlord to evict a tenant

A notice of termination must be valid

- Landlord must apply to NCAT for a termination order – if the notice is not valid, NCAT should not make a termination order
- NCAT is the place to challenge the validity of a termination notice.

1. Notice of Termination

Requirements for a valid notice of termination – see section 82 of the *RTA*

- In writing and signed by the person giving the notice
- Address of the residential premises
- Termination date
- Ground (reason) relied upon
- Validly served on the tenant – see section 223 *RTA*
- Accompanied by Termination Information Statement – see RT Reg 23A
- Accompanied by supporting evidence (where required) - see RT Reg 23B-23I

1. Notice of Termination

Grounds for termination:

Tenant related:

- Breach of the tenancy agreement
- End of an employee or caretaker arrangement
- Tenant no longer eligible for type of housing

Landlord/premises related:

- Property sold, or being prepared for sale
- Repairs, renovations, demolition
- Landlord or family member moving in
- Property no longer to be rented

Also:

- Agreement frustrated (property has become uninhabitable)
- Social Housing-specific grounds – no longer eligible, tenant offered alternative premises

1. Notice of Termination

CHALLENGE 1

Was enough notice given?

- Notice period depends on the termination ground and the length of tenancy
- Insufficient notice will make the notice invalid
- For most grounds, the termination date must fall **after** the end of the fixed term of the tenancy agreement
 - Exceptions:
 - › Breach – e.g. tenant hasn't paid rent
 - › Frustration – e.g. property has become uninhabitable

1. Notice of Termination

CHALLENGE 1

Was enough notice given?

- The tenancy agreement
 - › Length of agreement and end date
 - › 12 months, ending on 01/12/2026
- Notice of Termination
 - › Termination date
 - › Termination Ground
 - › Method of service
- Legislation (RTA) or other resources
 - › Required notice period and evidence

Term of agreement:

☐ 6 months ☒ 12 months ☐ 2 years ☐ 3 years ☐ 5 years

☐ Other (please specify): ☐ Periodic (no end date)

starting on 01/12/2025 and ending on 01/12/2026 (Cross out if not applicable) dd/mm/yyyy

Note: For a residential tenancy agreement having a fixed term of more than 3 years, the agreement must be annexed to the form approved by the Registrar-General for registration under the Real Property Act 1900.

Residential premises:

The residential premises are (Insert address):

15 Main Street Sydney NSW 2000

The residential premises include:

1. Notice of Termination

CHALLENGE 1

Was enough notice given?

- The tenancy agreement
 - › Length of agreement and end date
 - › 12 months, ending on 01/12/2026
- Notice of Termination
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 - › Termination Ground
 - › Method of service
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 - › Required notice period and evidence

NSW Fair Trading



Notice to terminate tenancy agreement

By Landlord or Agent under the Residential Tenancies Act 2010

Please complete this form using a black pen in BLOCK LETTERS

Name of tenant/s: Jo and Sam Jonesmith

I give you notice to leave the premises and give vacant possession (move out) of:

Address of premises: 15 Main Street, Sydney NSW

On: 08/11/2026 dd/mm/yyyy (insert termination date)

Note: refer to the table for minimum notice periods required
refer to the table for supporting documents or information

Reason for termination

This notice is being given on the following ground:

(select one)

☐ A

☐ T

☐ Delivering it to the tenant in person.

☐ Mailing it to the tenant (allow 7 business days for service).

☐ Personally putting it in the tenant's letterbox, in an envelope

☐ Delivering it to somebody in person over 16 at the premises.

☒ Emailing it to the tenant's specified email address for the service

Signature of landlord or agent:

Date delivered/posted/emailed: 12/08/2026

dd/mm/yyyy

☒ Landlord or family will reside at the premises (Section 87M)

The landlord or a family member who is a relevant person will reside at the premise for at least 6 months.

Note: supporting documents must accompany this termination notice if using this ground.

A relevant person can include a spouse or de facto partner of the landlord. It can also include the landlord or their partner's grandparent, parent, aunt/uncle, sibling, child, grandchild, niece/nephew, first cousin, or a dependent of the landlord who usually resides with them.

☐ Breach of tenancy agreement: (Section 87C)

The tenant has breached clause/s of the residential tenancy agreement.

1. Notice of Termination

CHALLENGE 1

Was enough notice given?

- The tenancy agreement
 - › Length of agreement and end date
 - › 12 months, ending on 01/12/2026
- Notice of Termination
 - › Termination date
 - › Termination Ground
 - › Method of service
- Legislation (RTA) or other resources
 - › Required notice period

87M Landlord or family will reside at the premises

- (1) A landlord may give a termination notice on the ground that a relevant person will reside at the residential premises for at least 6 months.
- (2) The termination date must be—
 - (a) for a periodic agreement—at least 90 days after the notice is given, or
 - (b) for a short fixed term agreement—
 - (i) on or after the end of the agreement, and
 - (ii) at least 60 days after the notice is given, or
 - (c) for another fixed term agreement—
 - (i) on or after the end of the agreement, and
 - (ii) at least 90 days after the notice is given.

1. Notice of Termination

CHALLENGE 1

Was enough notice given? In this example:

- The tenancy had a fixed term of 12 months
- Expiring on 01/12/2026
- Termination ground is the landlord moving into the property
- Notice was given by email on 12/08/2026
- Termination date on notice is 08/11/2026

1. Notice of Termination

CHALLENGE 1

Was enough notice given? In this example:

- The tenancy had a fixed term of 12 months
- Expiring on 01/12/2026
- Termination ground is the landlord moving into the property
- Notice was given by email on 12/08/2026
- Termination date on notice is 08/11/2026

The notice is NOT valid because:

- The termination date is BEFORE the end of the fixed term of the agreement
- Only 88 days' notice given
- Notice required for that ground is 90 days, ON or AFTER the end of the fixed term

1. Notice of Termination

CHALLENGE 2

Were the correct documents provided with the termination notice?

- ALL termination notices must be served with a Termination Information Statement
 - Standard form published by NSW Fair Trading
- MANY grounds require supporting evidence to be served with the termination notice
 - Set out in the *Residential Tenancies Regulations*

NSW Fair Trading



Termination Information Statement

Landlords or agents must give all tenants a **Termination Information Statement** when giving a termination notice to end a residential tenancy agreement.

Make sure you read this information statement carefully.

Ending a tenancy

A tenancy agreement is a legally binding agreement that can only be ended in certain ways and for certain reasons under the *Residential Tenancies Act 2010* (the Act).

Termination notice must be given

If a landlord wants to end a tenancy agreement, the landlord or agent must give you a written termination notice. The only exception is for reasons that allow the landlord to apply directly to the NSW Civil and Administrative Tribunal (the Tribunal).

The termination notice must be in writing, signed by the landlord or their agent and must include:

- the address of the rented property
- the date you must move out
- the reason the tenancy is being ended, and
- documents that support the reason for ending the tenancy (if applicable).

Reasons a landlord can give a termination notice

1. Notice of Termination

CHALLENGE 2

Notice may be invalid if:

- No Termination Information Statement was given
- No supporting evidence was provided
- The supporting evidence does not meet requirements
 - E.g. doesn't state landlord will reside for at least 6 months, not signed and dated etc.

23I Termination notices if landlord or family will reside at premises

- (1) For the Act, section 85(1), a landlord must, when giving a termination notice under the Act, section 87M, give the tenant—
- (a) a written statement from the landlord, and
 - (b) if the notice is given on the ground that a relevant person who is not the landlord will reside at the premises—a written statement from the relevant person.

(3) The landlord's written statement under subclause (1)(a) must—

- (a) be signed and dated by the landlord, and
- (b) state the following—
 - (i) if the notice is given on the ground that the landlord will reside at the premises—that the landlord will reside at the premises for at least 6 months,
 - (ii) if the notice is given on the ground that a relevant person who is not the landlord will reside at the premises—
 - (A) that the relevant person will reside at the premises for at least 6 months, and
 - (B) the relationship between the relevant person and the landlord.

2. Application to NCAT

- If a tenant has not moved out by the termination date on the notice of termination, landlord has to apply to NCAT for a termination order
- The landlord cannot just change the locks of the premises or call police to get a tenant out
- NB - There are some circumstances where a landlord can apply directly to NCAT for termination orders without first issuing a notice of termination
 - Termination for significant breaches e.g. illegal use of the premises

2. Application to NCAT

CHALLENGE 3

- The landlord cannot apply to the Tribunal before the termination date on the notice
- If the application is made too early, it will be dismissed
 - Exception for applications for termination for rent arrears

3. NCAT Hearing

- Parties will receive notice of conciliation hearing
- Conciliation and group list hearing
- NCAT will ask both parties to negotiate and try to reach an agreement
- If no agreement can be reached, the matter will need to be decided by a Tribunal member

Always attend the hearing



3. NCAT Hearing

Challenges discussed so far should be raised early in the process

- If the termination notice or application are invalid, the matter should be dismissed
- Landlord may be told to withdraw their application
- NCAT has the power to correct 'defects' in termination notices
 - Should not correct if not enough notice has been given, or if supporting material is not provided
 - May correct defects if some formal requirements not met

3. NCAT Hearing

If not resolved in conciliation, will go to a hearing

Some termination matters are adjourned to a future date for formal hearing, with directions for the parties to exchange evidence

Many termination matters are decided at the first hearing

- Termination for rental arrears
- Termination on grounds where termination is 'mandatory'

3. NCAT Hearing

CHALLENGE 4

Is the ground of termination genuine?

- For most grounds of termination, the Tribunal MUST terminate the tenancy
- IF it is satisfied that:
 - the notice was given validly
 - the ground is genuine

Tenants can put on evidence that the ground is not genuine

- It will usually be difficult for a tenant to get that kind of evidence

3. NCAT Hearing

CHALLENGE 5

Was the notice of termination 'retaliatory'?

- Tenant may receive a notice of termination soon after asking for repairs, disputing a rent increase
- Tenant can apply to the Tribunal for a finding that the notice was retaliatory
- Needs to show that the landlord was motivated to give the notice because the tenant had tried to enforce rights - section 115 RTA
- Cross-over with 'grounds not genuine'

3. NCAT Hearing

CHALLENGE 6

Hearing before a Tribunal Member

For Terminations where the Tribunal has 'discretion', the tenant and landlord may present broader evidence. The Member will decide whether to make a termination order

- Example - tenant evidence in termination for rent arrears:
 - Evidence that money has been paid toward the arrears
 - Evidence that the tenant can afford the rent and pay off the arrears
 - Evidence of the reason for non-payment of rent
 - Evidence of the tenant's circumstances and the hardship they will experience if evicted

3. NCAT Hearing

Special Cases Termination for Rent Arrears

- If termination is only for rent arrears, tenants can 'pay to stay' in the tenancy.
- If tenant pays arrears or enters into and complies with a repayment plan – ANY steps taken toward termination cease to have effect
 - Termination notice
 - Termination orders
 - Warrant for possession

Also – landlord can apply to NCAT BEFORE the termination date on the notice of termination

3. NCAT Hearing

Special Cases Long-term tenancies

- For a tenancy that has continued for 20 years or more, landlord cannot give notice of termination on most grounds
- Instead, must apply to the Tribunal for termination.
- Landlord must show grounds
- Tribunal can consider landlord's grounds and tenant's circumstances and decide whether to terminate
- If Tribunal terminates, tenant will have at least 90 days to move out

3. NCAT Hearing

Special Cases

Termination for serious breaches:

No termination notice required, landlord can apply directly to the Tribunal

- Illegal Use of the premises – RTA section 91
- Serious damage to premises or injury to landlord, agent, contractor, neighbour – RTA section 90
- Threat, abuse, intimidation or harassment to landlord, agent, contractor – RTA section 92

Common in social housing – special rules for social housing
INCLUDING mandatory terminations

4. NCAT Orders – termination and possession

- If NCAT decides the tenancy should be terminated, it will make termination and possession orders
- The "possession date" is the day that the tenant has to move out of the property.
- The Tribunal will usually 'suspend' or delay the possession date to give the tenant some time to move out. May be longer or shorter, depending on the circumstances
- Parties will often agree to a possession date in conciliation

5. Warrant for possession

- If the tenant remains in the premises after the vacant possession date specified by NCAT, the landlord can apply to NCAT for a warrant of possession.
- Once NCAT issues a warrant of possession, it will be sent to the NSW Sheriff's Office.
- The landlord and the Sheriff's Office will schedule a time for the warrant to be executed; they are not required to inform the tenant of this timing.
- If notified that a warrant of possession has been issued, the tenant should prepare a bag containing all important documents, possessions, medications, chargers etc
- Tenants can contact the NSW Sheriff to ask when the warrant will be executed

6. Execution of warrant

When the Sheriff turns up with a warrant to be executed, it is important to comply with the Sheriff.

Have a bag already packed with important documents and possessions, medications and other essential items

If goods are left behind in the property, the tenant will have to arrange collection with the landlord.

The Tenant can apply to NCAT if the landlord refuses access

Goods can be disposed after landlord gives notice of disposal – the *Uncollected Goods Act* applies

3. Social Housing Terminations



Redfern
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Centre

Social Housing Terminations

Social Housing Tenants will only be terminated in limited circumstances

The termination process is the same as for private tenants:

Termination notice – NCAT application – termination order – warrant

Note NCAT runs a specialist Aboriginal Tenancy List – First Nations tenants can request to have their matter moved to that list, where additional support and services are available.

Social Housing Terminations

- Breach of the tenancy agreement:
 - Rent Arrears due to non-payment of rent
 - Anti-social behaviour e.g. noise and nuisance, neighbours
 - Property care e.g. hoarding behaviour
 - Non-occupancy

Social Housing Terminations

Non-occupancy:

- Social housing tenants are required to live in their properties, this is a term of social housing tenancy agreements.
- Can be given a termination notice for breach – non-occupancy

Subsidy cancellation or recalculation:

- Can result in significant rental arrears
- NCAT can't review correctness rent subsidy – might need to adjourn while that decision is appealed

Social Housing Terminations

Mandatory Termination for some serious breaches:

- Illegal Use, Serious damage or injury – section 90 and 91
- The Tribunal must terminate if satisfied of certain conduct or offences
- Exceptions in cases of undue hardship to children, people with disability, people at risk who could seek AVO
- This is complex – seek advice from local tenancy service

Social Housing Terminations

Other grounds:

- Eligibility – tenant no longer eligible for social housing after review
- Alternative Premises – tenant is subject to relocation and has refused 2 reasonable offers of housing
- Behaviour Ground – rarely used

4. Termination by a tenant



Tenant vacating - notice of termination

- Periodic agreement, no reason – **21 days' notice** (periodic agreements only, not allowed in fixed term)
- End of fixed term, no reason – **14 days' notice**
- Landlord has breached the agreement – **14 days' notice** (or application directly to NCAT under s 103)
 - NB some risk of being charged a break fee
- If the premises has become uninhabitable – **notice can take effect immediately**
- Domestic violence – **notice can take effect immediately**, needs to be accompanied by evidence such as ADVO or competent person statement

Tenant vacating - notice of termination

Early termination without compensation to landlord – section 100 RTA

Narrow circumstances where tenant can give a **14 day** notice of termination:

- Tenant has accepted a place in social housing
- Tenant moving into aged care facility
- Landlord has notified the tenant that they intend to sell the premises

Tenant vacating - early exit notices

If a landlord gives a termination notice:

- Tenants do not have to wait until the termination date on the notice to move out
- Tenants on a periodic lease can leave any time after being given a termination notice
- Tenants on a fixed-term lease can give a 14-day 'early exit' notice - the move-out date must be within 90 days of the lease end (or 60 days for short leases)

Tenant vacating - other circumstances

Breaking the lease:

- Tenants often decide to move out before the end of their fixed term
- If they do this, it will usually be treated as 'abandonment' and the tenant will pay a break fee

Landlord gives consent to tenant leaving early:

- A tenant can leave without penalty if the landlord agrees
- Commonly happens in relation to repair issue

5. Unlawful lockouts



Unlawful lockouts

- Landlords **cannot** just change the locks and kick a tenant out of the premises.
- The proper process discussed at the beginning of the webinar **must** be followed.
- **Only** the Sheriff of NSW can execute a warrant for possession.
- A person who unlawfully locks out a tenant can face a **penalty** of up to \$22,000

Unlawful lockouts

If a landlord threatens lockout

- Contact local tenancy service for urgent assistance
- Call NSW Fair Trading
- Gather essentials and keep them with you
- Urgent application to NCAT:
 - Orders restraining landlord from breaching
 - Compensation for expenses and for lost enjoyment

Questions... & answers

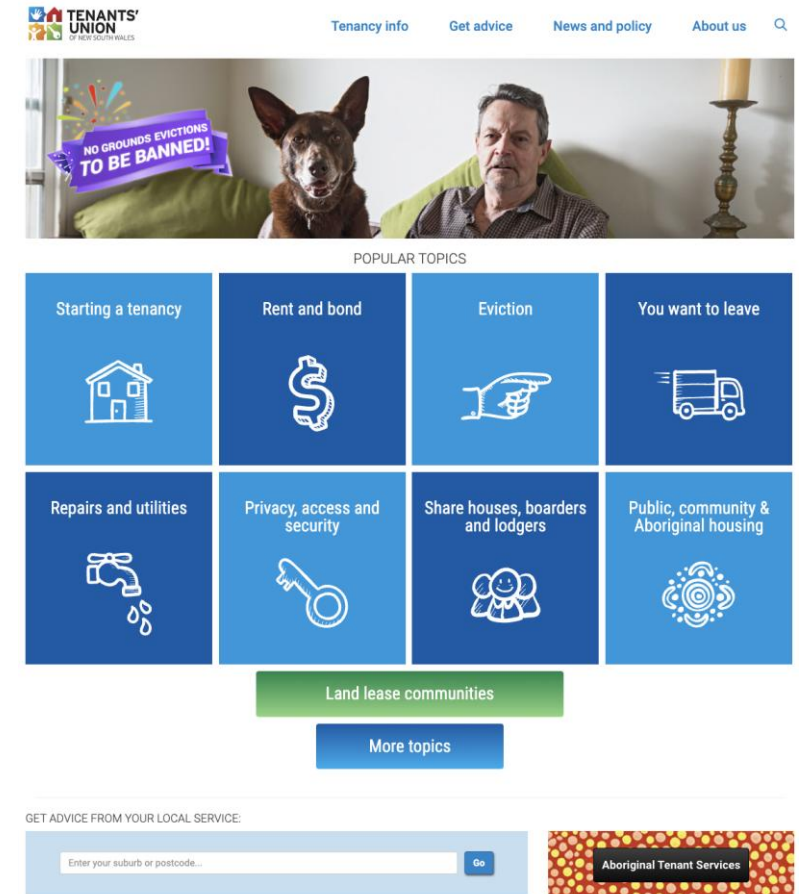
Resources:

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Information & Advice for Tenants

- www.tenants.org.au
- fact sheets and sample letters >>>>>
- free confidential legal advice for tenants
To find your Tenants Advice & Advocacy Service,
enter your suburb or town >>>>>



Community legal education - free webinars & recordings

rlc.org.au/training

education@rlc.org.au

 EVENTS <u>Repair your credit report after financial abuse (webinar)</u> Victim survivors of financial abuse experience impacts on their credit report... and so their lives ...for years after they leave the relationship behind. 5 April 2023	 EVENTS <u>Women @ Work (webinar)</u> Women @ Work 31 August 2022
 EVENTS <u>Family law remedies to address financial abuse (webinar series)</u> Family law remedies to address financial abuse (webinar series) 1 February 2023	 PAGE <u>Financial abuse in intimate partner relationships (recordings & resources)</u> Webinar series for community workers and volunteers in financial counselling, domestic violence, women's refuges and community legal centres.
 EVENTS <u>Reporting a Sexual Assault – NSW Police and NSW Health Procedure (webinar)</u> What is NSW Police and Health best practice when someone reports a sexual assault? 17 June 2021	 EVENTS <u>How to Appeal a COVID-19 Fine in NSW (webinar recording)</u> Thousands of people have been fined under the Public Health Orders in NSW. Police don't always get it right. 6 October 2021

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Terminations of Residential
Tenancies in NSW (and how to
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