

# De'Termination: Evictions and how to challenge them (NSW)



Redfern Legal Centre



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# **Acknowledgement Of Country**

# Outline

1. Overview of the termination process
2. When can a tenant be evicted?
3. When can a tenant terminate the tenancy agreement?
4. Illegal lockouts
5. Questions and more information/advice

Resources [www.rlc.org.au/training/resources/evictions](http://www.rlc.org.au/training/resources/evictions)



# 1. Overview of the termination process

# Overview of the termination process

- a) Notice of Termination
- b) Application to the NSW Civil & Administrative Tribunal (NCAT)
- c) NCAT hearing
- d) NCAT orders termination and possession
- e) NCAT issues warrant for possession
- f) Sheriff of NSW executes warrant for possession and locks are changed

# Overview of the termination process

## a) Notice of Termination

You **DO NOT HAVE TO MOVE OUT** in accordance with the date on the Notice of Termination

# Overview of the termination process

**b) Application to the NSW Civil & Administrative Tribunal (NCAT)**



# Overview of the termination process

## **c) NCAT hearing**

Always attend the hearing unless the NCAT tells you in writing that you do not need to attend.

# Overview of the termination process

## **d) NCAT orders termination and possession**

Seek advice ASAP about whether there are grounds to have the orders set aside or to appeal!

# Overview of the termination process

## **e) NCAT issues warrant for possession**

Pack a bag of all important documents, possessions and medications.

# Overview of the termination process

**f) Sheriff of NSW executes warrant for possession and locks are changed**

Comply with the Sheriff.



## 2. When can a tenant be evicted?

# When can a tenant be evicted?

Most common types of evictions:

- Breach of residential tenancy agreement including rental arrears – 14 days notice
- End of fixed term – 30 days notice
- No grounds – 90 days notice (not allowed during fixed term)
- Sale of premises – 30 days notice

# When can a tenant be evicted?

Sample letters:

<https://www.tenants.org.au/resources/eviction>



**3. When can  
a tenant  
terminate  
the tenancy  
agreement?**



# When can a tenant terminate the tenancy agreement?

- Landlord has breached the agreement – 14 days notice
- End of fixed term – 14 days notice
- No grounds – 21 days notice (not allowed in fixed term)
- There has been domestic violence

# Breaking the lease early

Break fees usually apply when breaking a lease. Many rental agreements contain these break fees:

- If less than 50% of the fixed term had expired — 6 week's rent
- If more than 50% of the fixed term had expired — 4 week's rent

For agreements that do not have this clause, or where this clause is crossed out, the break fee equals the landlord's financial losses - can include things like rent until a new tenant moves in, advertising costs, real estate fees.

# Breaking the lease early

**NEW LAW! Expected to come into force February/March 2019:**

< 25% of the fixed term had expired — 4 weeks' rent

25% - 50% of the fixed term had expired — 3 weeks' rent

50% - 75% of the fixed term had expired — 2 weeks' rent

75% or more of the fixed term had expired — 1 week's rent

# When can a tenant terminate the tenancy agreement?

Sample letters:

<https://www.tenants.org.au/resources/you-want-to-leave>

A photograph of a city street scene. In the foreground, a man with white hair, wearing a blue polo shirt and khaki shorts, is walking away from the camera, carrying a green tote bag. Behind him, other pedestrians are visible, including a woman in a white shirt and a man in a tan jacket. The street is lined with trees, and a metal pole is visible. The background is slightly blurred, showing buildings and a street. A large, semi-transparent blue circle is overlaid on the right side of the image, containing the text '4. Illegal lockouts' in white, bold, sans-serif font.

## 4. Illegal lockouts

# Illegal lockouts

- Only the Sheriff of NSW can execute a warrant for possession
- A person who illegally locks out a tenant can face a penalty of up to \$22,000

# Illegal lockouts

Sample letters:

<https://www.tenants.org.au/resources/eviction>

# Questions?



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**RESOURCES:** [www.rlc.org.au/training/resources/evictions](http://www.rlc.org.au/training/resources/evictions)



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# Before You Go

**Your feedback** helps us improve our training.  
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**Training:** [rlc.org.au/training](https://rlc.org.au/training)

Enquiries: Nick Manning  
[education@rlc.org.au](mailto:education@rlc.org.au)

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

# Thank you



Redfern Legal Centre

# We Can Come to You

RLC can present this workshop at your staff training or interagency – or we can customise training to suit your needs.



**Enquiries:** Nick Manning  
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