

Termination of a Tenancy

Policy

Date effective: 10 December 2019

1. Purpose

This policy outlines how and when a public housing tenancy can be ended, considering the needs of the client alongside the objectives of the Department of Local Government, Housing and Community Development (the Department) 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.
- Aim to ensure that no household is transitioned out of public housing into homelessness.
- Ensure 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 Department 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 requirements under the relevant legislation. For tenancy agreements started from 1 March 2000, the *Residential Tenancies Act 1999* applies. Where a tenancy agreement started before 1 March 2000, the *Tenancy Act 1979* applies.

4.1. Termination by either the tenant or the Department

4.1.1. If premises flooded, unsafe or uninhabitable

Under the *Residential Tenancies Act 1999*, either the tenant (section 92) or the Department (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;

- 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 Department's property; or
- the premises have become uninhabitable.

The Department 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.

4.1.2. Upgrade, repair or replacement of public housing premises

The Department may need to upgrade, repair or replace public housing premises to ensure that housing continues to meet the needs of tenants. In order to do this, the Department will invite a tenant to transfer to other premises or to temporarily vacate the premises so that it can be upgraded, repaired or replaced. The Department will ensure tenants have appropriate accommodation during a temporary vacate. Refer to the Transitional Accommodation policy for more information on tenancies in remote communities, town camps and community living areas.

A tenant may end a tenancy agreement to allow for upgrade, repair or replacement of the premises:

- with 14 days notice for a periodic tenancy agreement under section 94 of the *Residential Tenancies Act 1999*;
- with 14 days notice prior to the end of a fixed term tenancy agreement under section 95 of the *Residential Tenancies Act 1999*; or
- by giving up possession with the Department's consent under section 82(1)(f) of the *Residential Tenancies Act 1999*.

The Department may end a tenancy agreement to allow for upgrade, repair or replacement of the premises:

- with 42 days notice for a periodic tenancy agreement under section 89 of the *Residential Tenancies Act 1999*; or
- with 14 days notice prior to the end of a fixed term tenancy agreement under section 90 of the *Residential Tenancies Act 1999*.

4.2. Termination by the tenant

A tenant may terminate their tenancy to:

- leave public housing;
- transfer to other public housing premises (including house swaps); or
- give up possession of premises with the Department'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 of them.

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 Department under section 82(1)(f) of the *Residential Tenancies Act 1999*.

If a tenant seeks to give up possession with the Department's consent, consent will not be withheld by the Department. The Department 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 Department

4.3.1. Drug premises order made

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

4.3.3. Transfer to another public housing premises and house swaps

To accommodate changes in household composition, the Department may require a tenant to transfer to other public housing premises in line with the Entitlement policy. If a tenant refuses to move:

- a periodic tenancy agreement may be terminated under section 89 of the *Residential Tenancies Act 1999* with 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).

In some cases, tenants may have moved between public housing premises without prior approval from the Department (i.e. a 'house swap'). Where tenants do not have a tenancy agreement for the premises they are living in, the Department 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 Department. Where the Department 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 Department will apply to the Northern Territory Civil and Administrative Tribunal to have the premises declared abandoned.

4.4. Termination by the Northern Territory Civil and Administrative Tribunal

Either the tenant, the Department 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 Department 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 Department

The Department 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 a tenancy agreement. Where the tenant has breached the tenancy agreement, it is the Department'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 Department's approach to breaches of public housing tenancy agreements.

The Department 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 Department 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 Department'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 Department manages housing under a lease arrangement, for example, in a remote community.

The Department will advise tenants if there is a change to their landlord.

4.5. Death of a tenant

The Department recognises that the death of a tenant can be a difficult and emotional time for other residents and/or family members. The Department does not require a copy of the death certificate or written advice of the death. The Department 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.

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, the Department will immediately notify Territory Families.

Where the death of a sole tenant leaves recognised occupiers in the premises, the Department will offer a new tenancy agreement to recognised occupiers if they are eligible for public housing. The Director 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 Department 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 providing sufficient notice is given under section 90 of the *Residential Tenancies Act 1999*. Refer to the Public Housing Transfers policy.

Where occupants are not eligible to remain in public housing following the death of a sole tenant, the Department will allow up to six weeks for occupants (including dependent children, if this is requested by Territory Families) to arrange alternative accommodation. The Department 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*, the Local Court may make an order for a tenancy agreement to be terminated to remove a person from a tenancy agreement where there is a domestic violence order in force against that person. The court may also order that a new replacement tenancy agreement be entered into with the remaining tenants/occupants.

5. Discretionary decision making

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. Refer to the Discretionary Decision Making policy.

6. Complaints and/or appeals

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

7. 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.

8. References

8.1. Legislation

Domestic and Family Violence Act 2007

Housing Act 1982

Misuse of Drugs Act 1990

Residential Tenancies Act 1999

Tenancy Act 1979

8.2. Policies

Appeals policy

Complaints policy

Discretionary Decision Making policy

Eligibility for Public Housing policy

Entitlement policy

Illegal Use of a Dwelling policy

Public Housing Transfers

Tenancy Agreement Breach policy

Tenancy Agreements for Public Housing policy

Transitional Accommodation policy

9. Document change control table

Release Date	Version Number	Approved by (position)	Section amended	Category
10/12/2019	4.00	Chief Executive Officer	all	Revised
4/07/2016	3.00	Chief Executive Officer	all	Revised
19/10/2015	2.00	Director Policy	all	Editorial amendments
2/09/2013	1.00	Executive Director, Housing Operational Client Support	all	New separate policy derived from Housing Services Operational Policy Manual, Chapters 9 and 10