

Three Strikes Notice

Policy

BaptistCare aims to provide safe housing communities. This policy outlines rules to manage incidents of antisocial or illegal behaviour by housing tenants.

Definitions	
Breach	A breach of the Residential Tenancy Agreement occurs when a tenant does not adhere to one or more of the terms and conditions stipulated in the Lease that they signed when their tenancy started. This breach can be caused by the tenant, a member of the household or a guest or visitors of the tenant or household member.
NSW Civil and Administrative Tribunal (NCAT)	An accessible and low-cost service to resolve everyday disputes in New South Wales. <i>Formerly Consumer, Trader and Tenancy Tribunal</i>
Residential Tenancy Agreement (Lease)	An agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence.
Tenant	The person who has the right to occupy a residential premises under a residential tenancy agreement.
Three Strike Scheme	A scheme to manage minor or moderate antisocial behaviour that may result in termination of a Lease. Two Strike Notices must be given before termination can be sought through the NSW Civil and Administrative Tribunal.

Procedure

Breaching the Residential Tenancy Agreement (Lease)

Where a tenant has breached their Lease through antisocial behaviour, BaptistCare will:

- address all breaches or alleged breaches promptly, particularly those that involve unacceptable behaviour that interferes with or threatens the safety or wellbeing of other tenants, community neighbours or household members;
- intervene as early as possible to lessen the impact on all parties and to minimise the risk of eviction;
- investigate and act appropriately in response to all alleged breaches of tenancy.

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Antisocial behaviour disrupts all tenants and causes unsafe housing and impacts on tenants' health and wellbeing.

BaptistCare has adopted the definitions of antisocial behavior as per the Department of Communities and Justice (DCJ) Antisocial Behaviour Policy. BaptistCare defines antisocial behaviour in three categories.

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Severe illegal behaviour is behaviour which poses a risk to the safety or security of residents or property and may result in criminal charges and/or conviction; or significant damage to BaptistCare property. Examples of severe illegal behaviour may include but is not limited to:

- committing injury towards a neighbour or visitor which constitutes grievous bodily harm;
- the use of the premises for the manufacture, sale, cultivation or supply of any prohibited drug;
- the use of the premises for storing unlicensed firearms;
- the use of the premises for a show cause offence within the meaning of the Bail Act 2013;
- intentional or reckless damage to a BaptistCare property making it uninhabitable;
- the use of the premises as an illegal brothel;
- the use of the premises for the production or distribution of child abuse material;
- the use of the premises to facilitate organised vehicle rebirthing;
- physical assault or acts of violence against other tenants, neighbours or BaptistCare staff where there is no grievous bodily harm.

Serious antisocial behaviour involves activities that severely disturb neighbours; place the safety or security of a tenant, other household members, neighbours or BaptistCare employees at risk; or cause damage to a BaptistCare property. These behaviours may also be illegal and may include, but are not limited to:

- threats, abuse, intimidation or harassment towards neighbours, visitors, BaptistCare employees or their contractors;
- victimisation and intimidation towards neighbours or visitors;
- provoking pets to attack neighbours or visitors;
- hate and threatening behaviour that targets members of identified groups because of their perceived differences (e.g. race and ethnicity, gender, age, religion, sexual orientation, mental health or disability);
- negligent and extensive damage to a BaptistCare property.

Minor and moderate antisocial behaviour involves activities which disturb the peace, comfort or privacy of other tenants or neighbours. Such behaviour may include but is not limited to:

- obscene language towards neighbours and visitors;
- bullying and harassment towards neighbours and visitors;
- noise causing nuisance e.g. loud and uncontrolled parties, excessive shouting/screaming or excessive noise from music or television;
- environmental and common area issues e.g. vandalism, graffiti, abandoning vehicles on BaptistCare property and refusing to remove them, carrying out noisy vehicle repairs in communal areas;
- leaving large amounts of rubbish within the home, garden or on communal areas;
- behaviour which limits other tenants' access to communal facilities, such as preventing other tenants from accessing communal gardens or laundry facilities, and
- damaging any BaptistCare property including individual tenant's properties and common areas.

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BaptistCare will investigate allegations of antisocial behaviour and will facilitate early intervention and referral to appropriate internal and external support services to minimise the escalation of antisocial behaviour and the need to resolve cases through the NCAT.

When an allegation of antisocial behavior has been substantiated and a breach of the Lease has been confirmed, BaptistCare will respond as outlined below.

BaptistCare response to severe illegal behaviour

BaptistCare will generally apply directly to the NCAT to seek termination of the tenancy. However, in recognition of the impact of mental health conditions or domestic and family violence on the behaviour of tenants, the following process will apply:

BaptistCare will consider whether there is evidence available of a mental health condition or domestic and family violence and whether other solutions to address the behaviour may be more appropriate. BaptistCare employees will be required to include this information in their submissions.

BaptistCare response to serious antisocial behaviour

BaptistCare will generally issue a Notice of Termination followed by an application to the NCAT to seek termination of the tenancy. In some circumstances BaptistCare will apply directly to the NCAT to seek termination of the tenancy.

BaptistCare response to minor and moderate antisocial behaviour

BaptistCare will generally follow the strike notice provisions of the [Residential Tenancies Act 2010](#) to record strikes against a tenant for breaches of the Lease. The strike notice process clearly establishes for all tenants what type of behaviour is not acceptable and when they are putting their tenancy at risk. A tenancy will be at risk when a tenant repeatedly breaches the terms of their Lease through antisocial behaviour.

For minor/moderate antisocial behaviour, BaptistCare will in the first instance issue a warning identifying the breach. If the behaviour continues then BaptistCare will issue a first strike notice. First Strike notices are to include a support plan/behaviour modification plan to assist the tenant in avoiding termination.

BaptistCare will issue a strike notice for subsequent substantiated incidents of minor and moderate antisocial behaviour within a 12 month period.

If within a period of 12 month a tenant has two recorded strikes and they breach for a third time, BaptistCare can issue a termination notice and apply to NCAT for eviction. The tenant does not have a right to an internal review of the third strike notice.

Strike Notice

The strike must:

- be in writing;
- inform the tenant that a strike has been recorded;
- set out details of allegations;
- remind the tenant of any other strikes in the previous 12 months;
- warn the tenant that if a third strike is recorded within 12 months of the first strike, a termination notice will be issued;
- inform the tenant of their right to review;
- advise the tenant how to make a submission and the due date;
- warn the tenant that if they do not make a submission, the strike will be taken to be legally proven in NCAT.

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Issuing a Strike Notice

Tenancy Managers must ensure they have all the facts, backed up by evidence and paperwork. If there has been a breach the Tenancy Manager will record:

- the reasons for the breach;
- the client's circumstances;
- what is being done to address the breach.

An ASB Case should be open within the BaptistCare Tenancy Management System (Civica CX) and capture all steps including; interviews, investigations and all reported outcomes.

If the tenant is taken to the Tribunal, the termination may be declined if the process has not been followed or is not fair and just.

Records

All documents have to be scanned onto the tenant's CX file; notes to be kept on CX, all visits, contact, phone calls recorded on CX.

Right of Appeal

If a tenant is not satisfied with a service provided by BaptistCare or does not agree with a decision it has made, they can ask for a formal review.

The tenant has 21 days to provide submissions in response to a first or second strike notice. BaptistCare is to consider the submission and if found a breach has not occurred or there was extenuating circumstances BaptistCare may withdraw strike notice.

If a tenant doesn't respond to the initial strike notice by providing submission for appeal, then the strike is legally proven.

If a tenant doesn't appeal the decision of BaptistCare to uphold issuing of the strike notice then the strike is legally proven.

A tenant cannot appeal a warning notice.

Legislation

Housing Act 2001

Residential Tenancies Act 2010

Related Policies and Procedures

Feedback

References

[DCJ Antisocial Behaviour Management Policy](#)

[Residential Tenancies Act 2010](#)

[Residential Tenancies Regulation 2019](#)

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