

# Ending a Tenancy

## Policy

This policy outlines the process for ending a tenancy within the legal requirements of the Residential Tenancies Act 2010 and the Residential Tenancy Agreement. It applies to the completion of all tenancies for the following housing types:

- Social housing
- Affordable housing
- Transitional housing

BaptistCare operates from a service delivery perspective of supporting vulnerable tenants to maintain their tenancies. While NSW Civil and Administrative Tribunal (NCAT) action and eviction may be the result in some circumstances, all steps will be taken to assist a tenant to keep their tenancy.

| Definitions                           |   |
|---------------------------------------|---|
| Affordable Housing                    | Housing that is appropriate for the needs of a range of very low to moderate income households and priced so that these households are also able to meet other basic living costs, such as food, clothing, transport, medical care and education. As a rule of thumb, housing is usually considered affordable if it costs less than 30% of gross household income. |
| 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.                                     |
| 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.   |
| Social Housing                        | Housing for people on very low to low incomes. People within this group are eligible for public housing and are registered on the NSW Housing Register and are usually in receipt of some form of Centrelink or other statutory payment, and have an annual income in the lowest quartile for income distribution in Australia.                                     |
| Tenant                                | The person who has the right to occupy a residential premises under a residential tenancy agreement.  |
| Transitional Housing                  | Short term tenancies, generally up to 18 months, where external support agencies refer potential tenants who have experienced domestic and family violence. Potential tenants participate in support programs and undertake transition planning to a longer term and/or permanent housing.  |
| Vacant-tenantable                     | The property is ready to be relet but is not currently occupied.  |
| Vacant-untenantable                   | The property is not ready for reletting while undergoing maintenance or where maintenance has been deferred.  |

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All tenancies will ultimately end. This may be as a result of:

- The tenant deciding to leave the tenancy;
- The decision of BaptistCare to terminate the tenancy:
  - Breach of Lease,
  - Completion of program requirements,
  - Some other management reason;
- Some other reason (e.g. death of a tenant, necessary relocation due to loss of property).

## Procedure

### Tenancy termination by BaptistCare

BaptistCare may initiate a termination of tenancy. This may occur due to the following:

- Breach of the Lease
- Tenant no longer meets the specific eligibility requirements for a program
- Tenant has achieved the desired outcomes of the program
- Abandonment by the tenant (as outlined in the Residential Tenancies Act 2010)
- Death of a tenant
- Management objectives

The following notice periods apply (as specified in the Residential Tenancies Act 2010):

| Type of tenancy termination  | Notice period required |
|--|------------------------|
| <ul style="list-style-type: none"> <li>▪ End of a fixed term agreement<br/>(Notice provided before the end of fixed term, and ending on or after the end of fixed term)</li> </ul> | 30 days                |
| <ul style="list-style-type: none"> <li>▪ End of a continuing tenancy</li> </ul>  | 90 days                |
| <ul style="list-style-type: none"> <li>▪ Ending tenancy where tenant has breached agreement</li> </ul>   | 14 days                |

### Tenancy terminated by Tenant

If a tenant wishes to end their Lease, they are required to provide BaptistCare with written notice.

The following notice periods apply (as specified in the Residential Tenancies Act 2010):

| Type of tenancy termination  | Notice period required |
|--|------------------------|
| <ul style="list-style-type: none"> <li>▪ End of a Fixed Term Agreement<br/>(Notice provided before the end of fixed term, and ending on or after the end of fixed term)</li> </ul> | 14 days                |
| <ul style="list-style-type: none"> <li>▪ End of a Continuing Tenancy</li> </ul>  | 21 days                |
| <ul style="list-style-type: none"> <li>▪ Tenant has accepted an offer for social housing</li> <li>▪ Tenant has accepted a place in an aged care facility</li> </ul>                | 14 days                |
| <ul style="list-style-type: none"> <li>▪ Tenant exiting or transferring due to domestic violence</li> </ul>  | No notice required     |

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## Breach of the Residential Tenancy Agreement (Lease)

Where a tenant has breached their Lease, the tenant will be advised in writing and given opportunity and support to rectify the problem.

BaptistCare will initiate an end of tenancy due to a breach only after other available options have been exhausted.

The tenant will be informed of the termination of their tenancy in writing. This may also involve taking tribunal action with NCAT.

Breaches include anti-social behaviour or rental arrears.

Anti-social behavior includes:

- harassment;
- criminal and illegal activities;
- behaviour that places the safety of others at risk;
- inappropriate behaviour by tenants, other household occupants and visitors that cause deliberate or reckless damage to a BaptistCare property;
- **severe illegal behaviour** – 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 a BaptistCare property;
- **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;
- **minor and moderate antisocial behaviour** – involves activities which disturb the peace, comfort or privacy of other tenants or neighbours.

The laws allow for:

- a Three Strikes Notice policy to enable a Notice of Termination to be issued if a tenant has received three strike notices within a 12-month period;
- the introduction of Neighbourhood Impact Statements for consideration by the NCAT once a tenancy breach has been proven. These will assist the Tribunal member to understand the impact that anti-social behaviour has on neighbours and the community;
- NCAT to terminate a tenancy where it is satisfied that a tenant has committed a serious criminal offence such as the manufacture of drugs or the storing of an unlicensed firearm;
- BaptistCare to claim the money owed as rent arrears from tenants who fraudulently claim a rental subsidy;
- BaptistCare to recover the costs incurred for Tenant Damage.

## No Longer Eligible

Tenants of Affordable Housing who no longer meet the income eligibility requirement can be given up to 12 months to vacate the property.

Criteria for continued eligibility is dependent on program guidelines and include maximum terms of tenure and income.

Tenants will be continually assessed against eligibility prior to each fixed term Lease and will be renewed, provided:

- the tenant continues to meet the Cohort eligibility criteria, including single parent status, ongoing eligibility maximum income limits and any change in assets that might reasonably be expected to resolve their housing needs; and
- the total term of tenure has not exceeded maximum terms.

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### Transition to Exit Planning

BaptistCare tenants who have identified in their annual assessment that they will either be moving from social to affordable or private rental; or will no longer be eligible for social or affordable housing, will be assisted by the Tailored Support Coordinator to plan their transition to exit to ensure a smooth exit and a successful and sustainable tenancy in their new home.

### End of Tenancy Report

BaptistCare may also be required to prepare an End of Tenancy report as required by funding bodies. Prior to exiting, the Tailored Support Coordinator will arrange to meet with the tenant to gather the information.

### Abandonment by the tenant

Where BaptistCare believes that a property has been abandoned by a tenant, then BaptistCare will either;

- take immediate possession of the property if there is no doubt that the property has been abandoned;
- make effort to contact the tenant;
- make an application to NCAT to have the tenancy terminated.

### Death of a tenant

Where a sole tenant has died, BaptistCare will liaise with the tenant's family and/or executor in regard to the removal of all property. In circumstances where the tenant has no family, the tenancy can be ended immediately. Confirmation that the tenancy has ended will be sent to the estate of the tenant.

BaptistCare does not have capacity for succession of tenancy.

### Management Objectives

BaptistCare acknowledges that management objectives may occasionally necessitate relocating tenants. However, BaptistCare will seek to minimise this need (and avoid if possible). These reasons for requiring tenants to relocate may include:

- over or under occupation;
- needing the particular property for another tenant. (e.g. an applicant with special needs);
- redevelopment of the site;
- renovation of the property;
- property is being sold, or BaptistCare is unable retain the Lease.

If BaptistCare does initiate an end of tenancy for management reasons, then:

- BaptistCare will provide the tenant with two suitable offers of suitable alternative housing, and
- BaptistCare may contribute towards the cost of removalists.

In the event that the tenant does not accept one of the alternative properties offered, then BaptistCare may initiate formal proceedings to end the tenancy.

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### End of Tenancy under Section 85 of the Residential Tenancies Act

Under Section 85 of the Residential Tenancies Act 2010, BaptistCare may apply for a 90 days no grounds termination of a periodic tenancy agreement. BaptistCare recognises that a no grounds notice is a last resort available within the Residential Tenancies Act 2010 and that the principles of continuing tenancy and tenant rights will prevail as far as possible.

BaptistCare will only use Section 85 of the Residential Tenancies Act in the following circumstances:

- Tenant has completed program requirements, or is no longer eligible for housing under the specified housing program (see above).
- BaptistCare requires the property for management objectives (see above).
- In exceptional circumstances as approved by the General Manager – Community Services & Housing and only in extreme circumstances posing a risk of serious injury or danger to persons or properties and only after due consideration of circumstances.
- BaptistCare will **not routinely use Section 85 to terminate a tenancy agreement**. All other avenues with the NCAT must have been exhausted and procedural fairness and tenant rights maintained.

### Ending of Tenancy and Repairs

BaptistCare expects the tenant to return the property to the landlord in the condition that it was in at the start of the tenancy (excluding fair wear and tear). After conducting the end of tenancy inspection, BaptistCare will discuss any tenant damage, cleaning issues or unauthorised works with the tenant. The tenant will be given a reasonable opportunity to rectify any outstanding issues, including repairs and cleaning.

A daily occupation fee will be charged for each day after the date of termination that the tenant has possession of the premises. If the tenant declines the request to rectify the cleaning, gardening or repairs, BaptistCare will engage a contractor to carry out the work and costs will be charged to the tenant. If a bond has been paid, the costs will be deducted from the bond.

### Debt, rent arrears and end of tenancy charges

If a tenant vacates a property and there is outstanding rent arrears, debt or the cost of unrectified end of tenancy cleaning, gardening and repairs, BaptistCare will apply to NCAT for orders requiring repayment of outstanding charges.

The Department of Communities & Justice housing will also be advised of any debts, and if an ex-tenant requires future housing assistance, BaptistCare will expect the debt to be paid.

### Relinquishing a tenancy

A tenant may relinquish or be asked to relinquish their tenancy when they are unable to continue living in their property, for example, when the tenant has gone into long term care, rehabilitation or other institutional care or prison for more than three months.

In these situations, the tenant will receive confirmation that their tenancy has ended and where appropriate will be given information on the circumstances in which a tenancy can be reinstated.

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### Goods left in the residential premises

Where goods are left behind in the property, BaptistCare will deal with these in accordance with the Residential Tenancies Act 2010 and The Uncollected Goods Act 1995.

| Type of goods                              | Manner of notice                  | Notice period                     | Manner of disposal                              |
|--|-----------------------------------|-----------------------------------|---|
| Rubbish and perishables                    | Not required                      | Not required                      | Any appropriate manner                          |
| Personal documents                         | Written                           | 28 days                           | Return to author or securely destroy            |
| Other goods – less than \$1,000            | Verbal or written                 | 14 days                           | Any appropriate manner                          |
| Other goods – between \$1,000 and \$20,000 | Written                           | 28 days                           | Public auction or private sale for a fair value |
| Other goods – over \$20,000                | In accordance with Tribunal order | In accordance with Tribunal order | In accordance with Tribunal order               |

Notice will be given in accordance with the Residential Tenancies Act 2010 and The Uncollected Goods Act 1995.

If the goods are not collected within the timeframe specified in the notice, BaptistCare will dispose of them in accordance with the Residential Tenancies Act 2010 and The Uncollected Goods Act 1995.

### Transitional Housing

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. BaptistCare and the support provider make it clear at the start of the tenancy that the tenancy is for a fixed term and that a notice of termination will be issued to coincide with the last day of the tenancy. The tenant is made aware of the short duration of the accommodation and that the goal is for the tenant to access more permanent accommodation. During the fixed term Lease, the support agency will be assisting the tenant to find other accommodation.

The Housing Pathways application for these tenants remains live on the NSW Housing Register in recognition of the temporary nature of these tenancies.

### Tenant Exit Survey/Feedback

BaptistCare will seek feedback from the tenants at the end of their tenancy. The information obtained will be used to assist with continuous improvement.

### Eligibility for rental reference

A tenant will be eligible for a rental reference if:

- Rent was paid up to date and has been paid regularly for the previous six months
- There have been no tenancy breaches
- Notice has been properly given
- Property has been left in an acceptable condition and keys returned

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## Right of Appeal

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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.

If a tenant is unhappy with the outcome of an appeal to BaptistCare, they can lodge a second level appeal with the Housing Appeals Committee. The Housing Appeals Committee is an independent agency that reviews certain decisions made by staff of Community Housing Organisations and Housing NSW. For information on the Housing Appeals Committee call 1800 629 794 or go to <http://www.hac.nsw.gov.au>.

## Legislation

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Housing Act 2001

Residential Tenancies Act 2010

The Uncollected Goods Act 1995

## Related Policies & Procedures

Feedback

## References

[Evidence Guidelines](#)

[National Regulatory Code](#)

[Residential Tenancies Act 2010](#)

[Residential Tenancies Regulation 2019](#)

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