

# Breach of Tenancy

## Policy

BaptistCare ensure that all tenants receive fair and natural justice processes for tenancy breaches.

BaptistCare provides tenants with clear information about their rights and responsibilities at the start of and throughout their tenancy to prevent breaches wherever possible. At the time of signing their Lease, the tenant is to be issued with the BaptistCare Tenant Handbook, which outlines actions or behaviour that may be considered a breach of the Residential Tenancy Agreement.

BaptistCare will enforce the terms of the Residential Tenancy Agreement comprehensively, consistently and fairly. BaptistCare take all breaches seriously, and expects tenants to do the same.

This policy applies to residential tenancy commencement for the following housing types;

- Social housing
- Affordable housing
- Transitional housing

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.
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>
Rental Arrears Agreement	An agreement between BaptistCare and a tenant outlining a binding repayment schedule for rent arrears. This agreement is used when the tenant is unable to pay the arrears in a single lump sum. Repayments plans are to be fair and reasonable based on the tenant's income and expenses.
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.

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Definitions	
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.

## Procedure

### Breaching the Residential Tenancy Agreement (Lease)

Where a tenant has breached their Lease, 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 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;
- ensure that any interventions in response to a breach are reasonable considering the type of breach, are appropriate to the individual tenant, and employ appropriate community resources;
- ensure the BaptistCare Group Manager – Community Housing is informed of any action taken towards terminating a tenancy.

### Rent Arrears

In accordance with the Lease, BaptistCare expects tenants will pay the agreed rent. Where a tenant falls behind in their payments, BaptistCare will follow the procedure as outlined in the Rent Management Policy and Procedure.

### Rental Arrears Agreements

BaptistCare will enter into at least one repayment agreement at any stage of the rental arrears period prior to enforcement.

The following conditions apply to the establishment of a Rental Arrears Agreement:

1. The plan is to be fair and reasonable based on the tenant's income and expenses. Any agreement is to be within the financial means of the tenant.
2. The tenant is required to prove financial hardship.
3. The tenant and the Housing Manager will prepare an income and expenditure statement, if the tenant requests and/or agrees to, and agree on a set amount to be paid per week to remove the debt. The tenant may choose to involve a financial counsellor to help them determine their capacity to pay and BaptistCare is supportive of this involvement.

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4. The repayments will be minimum \$20.00 per week.
5. Repayments of rent arrears are in addition to ongoing rent payments.
6. The terms of the plan will not exceed a six month period.
7. All arrangements will be in writing, signed by the tenant and the Housing Manager and filed on the tenant's file.

The Housing Manager will respond in writing to confirm the particulars outlined in the request letter, and on receipt of this confirmation, the tenant will be considered to have entered into an agreement.

### Breach of Rental Arrears Agreements

Where a tenant fails to maintain the payments required in the Rental Arrears Agreement and falls behind in their payments, the following action will be taken:

- *One missed payment*
  - Housing Manager will contact tenant
- *Subsequent missed payments*
  - Meeting between tenant and Housing Manager
  - Tenant may elect to have a Support worker or advocate present
  - Tenant notified that unless immediately addressed, a Notice of Termination will be issued
  - Tenant will be asked to provide evidence to compel BaptistCare to refrain from issuing the notice, including steps to be taken by the tenant to resolve the arrears
- *No solution or continued missed payments, or constantly in arrears*
  - Housing Manager will notify Group Manager
  - Notice of Termination issued
  - Action taken through NCAT

### Abandonment

A property is considered to be abandoned only if it is clear that the tenant is not living there. In order to determine if the property has been abandoned, the Housing Manager is to inspect the property, monitor water and electricity meters, confirm that rent is no longer being paid, and make inquiries with neighbours, known associates or family, and any support staff. Make efforts to contact tenant; leave letters at property.

If the Housing Manager has reasonably determined the property to have been abandoned they will start action to take possession of the property and request that the NSW Civil and Administrative Tribunal (NCAT) declare the tenancy to be terminated. If a tenant believes that BaptistCare has wrongly declared their dwelling as abandoned, they can appeal to the NCAT.

Once the property has been declared abandoned, the tenant ceases to incur rent from that date, with consideration for any notice that was required on the tenancy.

The Residential Tenancies Act (RTA) defines BaptistCare's rights and responsibilities as a landlord if a property is abandoned. BaptistCare has the right to seek compensation for loss of rental income, property damage, and any costs of repossession of the property such as changing locks.

BaptistCare will contact the tenant using the last known address, email or mobile number regarding belongings abandoned.

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## Damages

### ***Any tenant causing willful damage will be required to pay for or repair the damage***

The Housing Manager will issue the tenant with a letter outlining that the act of willful damage is a breach of the Lease, and that if further damage occurs, the tenant will be issued with a Notice of Termination. The Housing Manager may contact the police to report willful damage to property.

## Anti-Social Behaviour

Anti-social behaviour in this context refers to violence, threats of violence, intimidation, nuisance or annoyance behaviours, illegal activity or a lack of care for the environment and property of BaptistCare.

Any tenant who has exhibited anti-social behaviour will have this recorded on their tenant file. Employees are alerted not to visit the tenant unaccompanied so as to maximise safety.

Where mental illness is considered to be a contributing factor to anti-social behaviour, the Housing Manager will seek consent from the tenant to involve their case worker or support staff in achieving a management plan that minimises the anti-social behaviour.

Significant, ongoing or unmanageable anti-social behaviour may result in the need to issue a Notice of Termination.

Displays of antisocial behaviour while on the waiting list may also be cause for removal from the waiting list and denial of any application for BaptistCare housing. Where a tenant can provide evidence that their anti-social behaviour is currently managed, they can continue to be considered for housing.

Anti-Social Behaviour as per Department of Communities & Justice (DCJ) policy ranges from mild to very serious.

## Three Strikes Notice

BaptistCare has adopted the definitions of anti-social behaviour as per DCJ Housing. Procedures will be followed and if breaches continue tenants may face eviction.

The procedure follows the Three Strikes Notice P&P which aligns with DCJ Antisocial Behaviour Management Policy.

## Complaints

BaptistCare will investigate and respond to potential or actual breaches of a Lease, including:

- complaints from tenants, occupants, their advocates or support workers, property owners or neighbours about anti-social behaviour by a tenant;
- potential or alleged illegal activity in our properties;
- unauthorised keeping of pets, additional occupants, sub-letting or alterations to the premises.

## Tenant Support

BaptistCare will facilitate the involvement of an advocate, interpreter or support worker if appropriate, and advise the tenant of independent tenancy advice services; when we are investigating or responding to a tenant breach. The tenant, and others, where appropriate – will be kept informed of investigations and responses regarding the breach, verbally and in writing. All letters from the tenant or others involved in the matter will be answered promptly, and filed appropriately and accessibly.

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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 [www.hac.nsw.gov.au](http://www.hac.nsw.gov.au).

## Legislation

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Housing Act 2001

Residential Tenancies Act 2010

## Related Policies and Procedures

Compliments, Complaints and Appeals – Housing  
Feedback

## References

[Residential Tenancies Act 2010](#)

[Residential Tenancies Regulation 2019](#)

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