

ENDING A TENANCY POLICY

Category: Community Housing

NOTE:

THIS POLICY MUST BE READ IN CONJUNCTION WITH THE FAMILY AND DOMESTIC VIOLENCE PROVISIONS WITHIN THE RESIDENTIAL TENANCIES ACT 1989 AND THE HCAFAMILY AND DOMESTIC VIOLENCE POLICIES AND PROCEDURES UNTIL SUCH TIME AS THIS POLICY HAS BEEN REVIEWED FOR ALIGNMENT.

| | | | |
|-----------------------------|---|-----------------------------|--|
| Effective date: | 27/06/07 | Custodian: | Natalie Sangalli General Manager Community Housing |
| External references: | <ul style="list-style-type: none"> • Civil Judgements Enforcement Act (2004) WA. • Community Housing Agreement • Community Housing Income and Assets Limits Policy • Equal Opportunities Act 1984 (WA) • National Rental Affordability Scheme Act 2008 • Privacy Act 1988 • Residential Tenancies Act 1987 • Residential Tenancies Regulations 1989 | Internal references: | <ul style="list-style-type: none"> • Abandonment Policy & Procedures • Eligibility & Rent Setting Policy & Procedures • Extended Absence Policy and Procedures • Feedback, Enquiries, Complaints & Appeals Policy & Procedures • Home Business Policy & Procedures • Information & Records Management Policy • Nuisance & ASB Policy & Procedures • Occupancy Policy • Pet Policy & Procedures • Privacy Policy • Property Inspection Policy & Procedures • Rent Arrears Policy & Procedures • Succession Policy & Procedures • Transfer, Mutual Exchange & Relocation Policy and Procedures |
| Version: | Last Review 14/12/18 | Review: | 14/12/2023 |

1. CONTEXT AND OBJECTIVES

Housing Choices Western Australia (Housing Choices WA) recognises that as tenant’s circumstances change, tenants may choose to voluntary vacate their property to move onto new opportunities.

In other instances, tenants may experience difficulties in meeting their tenancy responsibilities. Whilst we offer early assistance and work flexibly with partnership agencies to support tenants to sustain their tenancies and achieve a positive resolution, the success of such support relies on the tenant remaining engaged with Housing Choices WA and support services and making a reasonable effort to achieve agreed outcomes.

In some situations, our obligation to the broader community, protection of our asset and remaining a sustainable business means that we have no option but to look at ending the tenancy.

As such, this policy details the reasons and means by which a tenancy agreement can legally end.

2. DEFINITIONS

For the purpose of this policy, the term 'Tenant' applies to both tenants under the RTA and residents under a License to Occupy (LTO) Agreement, unless specifically referenced.

3. CONTENT

3.1. TENANT WISHES TO END A TENANCY

3.1.1. Voluntary Vacate

All notifications by a tenant to voluntarily end a tenancy must be in a written form by way of letter, recognised email address, 'Notice of termination by tenant to lessor' (Form 22) or by Housing Choices WA's Termination of Tenancy form.

Notice periods are (at least):

| | |
|--------------------|---|
| Periodic tenancy | 21 days |
| Fixed term tenancy | 21 days during tenancy or 30 days prior to the lease end date if the tenant does not wish the fixed term to be extended or renewed. |
| License to Occupy | 7 days |

In exceptional circumstances or where a tenant may face undue hardship by continuing the tenancy, a termination date less than the required notice period may be agreed with the mutual consent of both Housing Choices WA and the tenant.

Delivery of the termination notice may be in person, by email or by post. If sending by post, tenants must allow at least 3 working days postage, considering weekends and public holidays. Personal delivery and email are effective from the date of receipt.

3.1.2. Succession, Transfer, Mutual Exchange

Housing Choices WA operates a number of services to meet tenant's changing needs, namely:

- Joint to Sole - one party wishes to remove their name from the tenancy agreement
- Sole to Joint - a tenant wishes to add another party to the tenancy agreement
- Succession - transfer of a tenancy to a household member
- Transfer - transfer to alternative accommodation due to essential needs
- Mutual Exchange - tenants voluntarily swap properties

In such situations all processes follow the requirements of the Residential Tenancies Act and the tenancies are ended by mutual consent, with tenants signing new tenancy agreements.

3.2. HOUSING CHOICES WA WISHES TO END A TENANCY

3.2.1. Breach & Termination of the Tenancy Agreement/License to Occupy Agreement

Examples of breaches are:

- Failing to make rent or non-rent payments on time
- Not maintaining satisfactory property standards
- Keeping unauthorised pets
- Causing a nuisance or demonstrating anti-social behavior or allowing visitors to do so
- Using the premises for illegal activities
- Making alterations, modifications or additions to the property without approval
- Running a home business without approval
- Changing or adding locks without approval
- Subletting without approval

a) Periodic and Fixed Term Tenancies

Tenants will be advised in writing of a breach of the Tenancy Agreement and given details of what the breach is, and how it can be rectified. Tenants have 14 days to rectify the problem.

Failure to rectify will result the issuing of a Notice of Termination, seeking to end the tenancy no sooner than 7 days after the Notice of Termination is received.

In instances of non-payment of rent, a Notice of Termination (no Breach issued) can be issued with a Termination date of no less than 7 days.

b) License to Occupy Residents

Due to the impact or potential impact on other residents, the following breach and termination notices apply to LTO residents*:

| Type of Breach | Breach Notice (days) | Termination Notice (days) |
|--|----------------------|---------------------------|
| Arrears of rent/utilities fee | 4 | 48 hours |
| Nuisance & ASB | 2 | 48 hours |
| Poor cleanliness/hygiene | 4 | 48 hours |
| Possession/ use of illegal drugs | 0 | 0 |
| Drunk & Disorderly Behavior | 0 | 48 hours |
| Illegal/criminal activity | 2 | 48 hours |
| Violence or threats of violence | 0 | 0 |
| Other breach of Agreement and/or House Rules | 4 | 48 hours |

**NB: Timeframes may vary depending on the type of lodging house. Residents should refer to their LTO Agreement and House Rules.*

c) Notice of Termination

If the breach is resolved, no further action will be taken.

If the tenant fails to make efforts to rectify the situation within the required time, Housing Choices WA will issue a Notice of Termination to seek to end the tenancy.

All Notice of Terminations require the approval of the General Manager Community Services or their delegate.

3.2.2. **Serious damage, Violence or Threats of Violence**

Housing Choices WA will apply to the Magistrates Court for an order under Section 73 of the Residential Tenancies Act for immediate termination for tenants who are causing, or are believed to be causing, serious damage to the property or displaying aggressive, violent or threatening behaviour to neighbours or staff. In such instances, no breach notice will be issued.

License to Occupy residents may be immediately evicted.

3.2.3. **Abandonment**

Where there are reasonable grounds (as defined by the Department of Mines, Industry Regulation & Safety) to suspect a property has been abandoned, Housing Choices WA will issue the required notices and take action to secure and recover possession of the property according to the requirements of the Residential Tenancies Act.

3.2.4. **Non-Renewal or Extension of Fixed Term Tenancy**

A fixed term tenancy does not automatically expire on the lease end date. If the fixed term is not to be extended or renewed, Housing Choices WA will provide the tenant with at least 30 days' written notice of intention not to renew the fixed term tenancy, stating the date the tenant must vacate the property.

If the date on a Notice of Termination from the tenant is earlier than the original lease end date, the lease end date is the date that tenant's obligations cease.

If the date on the Notice of Termination is later than the lease end date, the date on the notice will apply (effectively extending the fixed term until the end of the Notice of Termination period). The tenant can choose to move out after the lease end date if they choose, rather than the date on the Notice of Termination. If both the tenant and Housing Choices WA issue 30 days' notice to each other and the dates on the Notices of Termination are different, the earliest date (after the original lease end date) will apply.

3.2.5. **60 days' Notice of Termination**

The Residential Tenancies Act (Section 64) allows for a Notice of Termination (Form 1C) to be issued to a tenant on a periodic tenancy, requesting vacant possession without specifying any ground for doing so.

Housing Choices WA is committed to working with tenants and support partners to sustain tenancies. However, there may be occasions when a tenant is no longer eligible for a property or it is in the best interests of the business, we will issue a Notice of Termination without specifying a reason.

3.2.6. **Relocation**

Housing Choices WA may wish a tenant to relocate to an alternative property. The reasons for this include:

- The property becomes uninhabitable and requires maintenance or demolition;
- Housing Choices WA wishes to sell the property;
- The tenant is no longer eligible for the property e.g. it is too small, or they no longer meet specific program requirements.
- The legal owner of the property wants the property back.

In such instances, Housing Choices WA will provide tenants with as much notice as possible and support tenants during the relocation process.

Where a tenant on a periodic tenancy agreement refuses suitable properties, Housing Choices WA may issue a 60-day Notice of Termination or 30-day Notice of Termination if the property is being sold. If the tenant is on a fixed term tenancy, Housing Choices WA may issue a 30-day Notice of Termination to end the tenancy agreement on its expiry date.

Refer Transfer, Mutual Exchange and Relocation Policy.

3.2.7. Ineligibility

Housing Choices WA is a not-for-profit company with the purpose of providing social and affordable housing for people on very low and low incomes. Tenants must remain eligible throughout their tenancies by having income or assets within the income and assets thresholds.

Tenants housed under special program or funding such as NRAS and supported housing, may be required to provide additional information to confirm eligibility.

Tenants who no longer meet the eligibility criteria will be assisted to plan an exit into alternative housing within 6 months of the notification of ineligibility where a 60-day notice will be issued. Tenants may leave by mutual consent at any time during the exit period. Extensions to the exit period may be given where tenants are genuinely attempting to secure alternative accommodation but are unable to do so.

The Termination Notice will be enforced for tenants who fail to engage in an exit plan and do not make genuine efforts to secure alternative accommodation. In the case of periodic tenancies, this will be 60 days and for fixed term tenancies, 30 days' notice will be given to end the tenancy on its expiry date.

Tenants who fail to provide satisfactory proof of household income and assets when requested within the time frame nominated, may be deemed ineligible.

Refer Eligibility and Rent Setting Policy

3.2.8. Death of all tenants

Where all tenants on the tenancy agreement die, the tenancy ends. Housing Choices WA will negotiate the actual vacant possession date with the next of kin to allow the removal of personal belongings. The rent will usually cease on the date the keys are returned and vacant possession is granted.

3.2.9. Court Orders and Evictions

Where Housing Choices WA has sought to end the tenancy by issuing a Notice of Termination and the tenant does not leave on the vacant possession date stated in the notice, Housing Choices WA will apply to the Magistrate's Court for an order to obtain possession of the property.

If an order for possession is granted and the tenant fails to leave on the date on the order, Housing Choices WA will obtain a Property (Seizure and Delivery) Order. This order is issued under the Civil Judgements Enforcement Act (2004) WA and allows a bailiff to enter the property and evict anyone unlawfully on the premises, if required.

3.3. AT THE END OF THE TENANCY

3.3.1. Tenant Responsibilities

Tenants are responsible for:

- Providing Housing Choices WA with a forwarding address
 - Giving Housing Choices WA vacant possession on the vacancy date & returning all keys
- Removing all furniture, personal items and rubbish
- Leaving the property clean and tidy
- Removing any approved alterations or additions and making good any damage
- Paying any outstanding debts such as rent, water and tenant liability
- Attending the outgoing property inspection
- Signing a joint application for disposal of security bond, if in agreement.

3.3.2. Housing Choices WA's Responsibilities

- Confirming the tenant's vacate date and outlining the end of tenancy process in writing
- Offering the tenant a pre-termination inspection to identify any potential tenant liability charges, to give the tenant an opportunity to avoid such charges
- Issuing a key receipt when keys are returned
- Inviting the tenant for a joint Outgoing Property Condition Inspection
- Identifying any non-fair wear and tear and taking photographic evidence
- Managing any abandoned goods & documents in line with the Abandonment Policy
- Issuing a final account to the tenant advising of any outstanding charges
- Signing a joint application for disposal of security bond, if in agreement.

4. VERSION NOTES

| Version | Date | Action | Author | Authorised by |
|---------|----------|---|---------|---------------|
| 1 | 27/06/07 | Policy ratified and implemented | U/K | Board |
| 2 | 21/06/16 | Position titles amended following restructure | M. Shaw | A. Wilkerson |
| 3 | 01/02/17 | Delegation amendment – the Regional Manager has the authority to terminate a tenancy | M. Shaw | K. Moorey |
| 4 | 01/06/17 | Policy suspended with the implementation of the revised Tenancy Management Policy. | M. Shaw | S. Groome |
| 5 | 14/12/18 | Policy re-introduced with full revision. | M. Shaw | K. Moorey |
| 6 | 02/01/20 | Cautionary notation added with reference to new FDV Policy | M. Shaw | N. Sangalli |

| Version | Date | Action | Author | Authorised by |
|----------------|-------------|--|---------------|----------------------|
| 7 | 11/02/21 | Business name change from Access Housing Australia to Housing Choices Western Australia (Housing Choices WA) and minor re-formatting. No change of policy content. | R Cavanagh | M Shaw |