

## Bushfire Season – Tenancy

This factsheet is designed to help your preparation for bushfire season in the ACT. If you have concerns about bushfire season, how to legally prepare, or what your rights and obligations are, please call the free **Legal Aid Helpline** on **1300 654 314**.

If your question is about your rental property, please call our **Tenancy Advice Service** on **1300 402 512** or email [tas@legalaidact.org.au](mailto:tas@legalaidact.org.au).

### Preventative measures

A good preventative measure is to ensure your rented home is as prepared as possible for a bushfire, particularly when you live in a bushfire prone area.

Your lessor has a general obligation to ensure the premises are in a condition that is fit for habitation. However, you should also take personal precautions to ensure that risk of bushfire damage is minimised. For example, you should remove flammable materials around the household and request repairs and maintenance as necessary to ensure your home is best equipped to handle a bushfire. Other things that you can do may include sweeping debris and leaves, ensuring you have working hoses and keeping your lawns well maintained.

If you have any concerns about the maintenance of your rental property and how it might affect you in a bushfire, you can discuss this with your lessor (preferably in writing). Keep records of this correspondence.

### What to do if the property you are renting has been destroyed or damaged and you cannot live there

If the property you are renting has been destroyed or damaged, it is a good idea to get legal advice. You can call our free **Tenancy Advice Service** on **1300 402 512** or email [tas@legalaidact.org.au](mailto:tas@legalaidact.org.au).

You should let the lessor know that the property has been damaged or destroyed. You may also need to

terminate the tenancy. To do so, you should give at least 2 days' written notice of termination of the tenancy stating that the premises are not fit for habitation. You will then need to return the keys to the lessor.

The lessor can also give you written notice terminating the tenancy, but they must give 1 week's notice of termination.

Rent is not payable from the date the premises are considered uninhabitable. If neither you nor the lessor give notice of termination of the tenancy, rent is not payable for the period that the premises are uninhabitable. The tenancy and rental payments resume if the premises becomes fit for habitation again.

If the lessor wants to inspect the property to determine whether it is uninhabitable, they will need to arrange a time with you to come and inspect the property.

If there is a dispute as to whether the premises are fit for habitation, either party may apply for an order from the ACT Civil and Administrative Tribunal (ACAT) declaring the premises to be unfit for habitation.

### What to do if you cannot access the property you live in because you have been evacuated

You may not know what the state of the property is because you cannot go back to it. In this situation, you cannot terminate your tenancy straight away.

You should contact your lessor and try to negotiate terms such as a rent reduction for the period that you are unable to access the property. Alternatively, you may agree to terminate the tenancy.

If you wish to terminate a periodic tenancy without the lessor's agreement, you must provide 3 weeks' written notice to the lessor. During this time, you must keep paying rent, but you could potentially claim this rent back as compensation if you cannot

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access the property. You may need to make an application to ACAT to recover the rent you paid as compensation if the lessor does not agree to pay you compensation.

If you wish to end a fixed term tenancy and your tenancy agreement contains a 'break lease' clause, you can agree to pay the break lease fee and end the tenancy early.

You may also be able to apply to ACAT seeking an order terminating your fixed term tenancy on the basis that you will suffer significant hardship if the tenancy was to continue.

If you are thinking of doing any of the above, it is a good idea to get legal advice. You can call our free **Tenancy Advice Service** on **1300 402 512** or email [tas@legalaidact.org.au](mailto:tas@legalaidact.org.au).

### Repairs

The lessor has an obligation to address repairs. If the property has some damage but you still want to live in it, you need to contact the lessor as soon as possible and report any damage that has occurred.

You should work out whether urgent repairs are required. These include things such as gas leaks, burst water services, dangerous electrical faults or anything else that makes the property unsafe or unfit for habitation. These repairs need to be addressed by the lessor as soon as practicable. Failure to do so may be grounds for making a rent reduction application to ACAT. If the lessor cannot be contacted or fails to carry out urgent repairs within a reasonable time, you may arrange for urgent repairs to be done to a maximum value of 5% of the rent of the property per annum.

For all non-urgent repairs, the lessor must make repairs within 4 weeks of notice.

### Moving out Temporarily

If you plan to move out temporarily because the premises are uninhabitable or repairs are being made, you should put it in writing to the lessor and make clear your position on a rent reduction, how long you will be away from premises and who will be responsible for the possessions within the premises. Ensure you keep a record of this correspondence with your lessor.

### Getting your bond back

If your property has been damaged or destroyed, you should be able to get your bond back. Your lessor should have lodged your bond with the ACT Office of Rental Bonds. You should lodge a return of bond form to the ACT Office of Rental Bonds and claim your bond back.

If damage to the property was caused by a bushfire, the lessor cannot keep your bond money for cleaning or repairs purposes.

### Claiming compensation for goods inside the property

The lessor's insurance will not cover your goods. You can insure your own goods by taking out contents insurance.

The lessor will only be liable to compensate you if the damage occurred because they did not properly maintain the property and keep it in good repair. If the damage has occurred because of circumstances outside the lessor's control, they will not be liable to pay compensation.

If you have any questions, please call our **Tenancy Advice Service** on **1300 402 512** or email [tas@legalaidact.org.au](mailto:tas@legalaidact.org.au).