

Landlord Ending a Tenancy

There are several grounds on which a landlord may seek to evict a tenant, but they must follow certain processes. The following factsheet summarises the main termination grounds that a landlord may rely upon. This factsheet is not an exhaustive list. Please seek legal advice if you have any concerns.

Forced evictions can only take place in the ACT if the ACT Civil and Administrative Tribunal ('ACAT') makes a Termination and Possession Order and then issues a warrant to police to carry out a tenant's eviction.

The ACAT will only take such steps after a landlord files an application for a Termination and Possession Order with the ACAT and the ACAT holds a hearing to determine whether or not to grant the order.

Notice to Remedy – failure to pay rent

If you fail to pay your full rent within 7 days of it being due, the landlord may serve a Notice to Remedy on you. The Notice to Remedy must tell you that if your outstanding rental arrears are not paid within 7 days, the landlord may serve a Notice to Vacate on you. The Notice to Remedy must also state that if you pay your rental arrears within the 7 days, the tenancy will continue.

If you are unable to pay the entirety of the rental arrears within the 7 day notice period, you should immediately contact your landlord or their agent and try to negotiate a way to avoid being issued with a Notice to Vacate.

Notice to Remedy – other breaches of the tenancy agreement

For a breach of the tenancy agreement other than a failure to pay rent (e.g. a failure to maintain the property in a reasonable state of repair, illegal sub-letting or causing a disturbance), the landlord must give you a Notice to Remedy detailing the alleged breach, specifying what you must do to remedy it and giving you 14 days to do so. The notice must state that if the breach is remedied the tenancy will continue, but if not, the landlord is entitled to serve a Notice to Vacate.

The Notice to Remedy must give you sufficient information to allow you to understand on what basis the Notice to Remedy is issued and be able to defend it if

necessary, as well as enough specificity around what you must do to remedy the issue.

Notice to Vacate – breach of the agreement

A Notice to Vacate can be issued following the expiry of a Notice to Remedy. A Notice to Vacate can also be issued if the landlord has previously during the tenancy served two Notices to Remedy on you in regards to the same issue.

A Notice to Vacate must give you at minimum 2 weeks to vacate the premises. The 2 weeks begins on the date you are served with the Notice to Vacate.

The Notice to Vacate must give you sufficient information to understand why the notice is being issued so that you can dispute it in ACAT if necessary.

Threats, harassment, intimidation or abuse

If a landlord believes that a tenant has engaged in conduct, against the landlord or a related person (e.g. the landlord's family member), that is threatening, intimidating, harassing or abusive (prohibited conduct) the landlord may apply to ACAT for an order terminating the tenancy agreement.

The landlord must, no later than 14 days after making the ACAT application, give the tenant written notice detailing the prohibited conduct.

Among other things, ACAT will consider the nature, frequency and duration of the conduct, the circumstances, whether the conduct is likely to continue, whether the tenant has stopped the conduct or agreed to stop the conduct or is reasonably likely to stop the any conduct, any family violence order or protection order made against the tenant and the effect of the conduct on the landlord.

Notice to Vacate – no breach of the agreement

Notice to vacate without cause

Your landlord can serve a Notice to Vacate without any reason provided the notice gives you 26 weeks to vacate and the date you are required to vacate is on or after the expiry of your fixed-term tenancy agreement.

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A notice to vacate without cause is only valid if it was issued prior to 1 April 2023. After 1 April 2023, a landlord is no longer allowed to issue a notice to vacate to a tenant without giving any reason.

If you received a notice to vacate without cause prior to 1 April 2023, you can:

- If the term of the tenancy ends in less than 2 weeks – give the landlord 4 days' notice before vacating the premises; or
- In any other case – give the landlord 3 weeks' notice before vacating the premise; or
- Seek orders from ACAT to disallow the notice to vacate if you think that the notice is retaliatory.

Termination of periodic tenancies

If you are in a periodic tenancy, the landlord can also serve you with a Notice to Vacate without any breach of the tenancy agreement on the following grounds:

- (i) if the landlord, or an immediate relative of the landlord, or another person who the landlord has obligations to house, genuinely intends to live in the premises, upon giving 8 weeks' notice;
- (ii) if the landlord genuinely intends to sell the premises, upon giving 8 weeks' notice;
- (iii) if the landlord genuinely intends to reconstruct, renovate or make major repairs to the premises, upon giving 12 weeks' notice.
- (iv) If the lessor genuinely requires the premises for a lawful use other than as a home, upon giving 26 weeks' notice.

If you are served with a notice to vacate in accordance with the grounds mentioned above, the landlord must provide you with written evidence supporting the landlord's reasons for issuing the notice to vacate. You may move out at any time during the 2 weeks before the date specified in the notice to vacate if you give the landlord 4 days' notice of intention to vacate.

Premises that are unfit for habitation

A landlord may by written notice terminate a tenancy (both fixed term and periodic tenancies) if the premises are not fit for habitation.

The landlord must give the tenant not less than 1 week's notice of termination of the tenancy and the rent abates from the date that the premises are uninhabitable.

Premises that are unavailable due to Government action

A landlord may by 1 week's written notice terminate a tenancy (both fixed term and periodic tenancies) if the premises are not available or will not be available because of Government action within a period of 4 weeks of the date that notice is given.

Posting

A landlord can terminate a tenancy where they are posted to the ACT in the course of their employment by providing the tenant 8 weeks' notice and evidence of the posting. However, this termination ground only applies if a posting clause was included in the tenancy agreement at the start of the tenancy.

Challenging retaliatory notices to vacate

If you receive a notice to vacate and believe that the landlord was motivated to give you the notice to vacate because:

- You previously applied to ACAT for an order in relation to the landlord;
- You complained to a government entity about the landlord;
- You took reasonable action to secure or enforce your rights as a tenant;
- ACAT made an order in your favour against the landlord; or
- You published information or disclosed information that was published about the premises, the tenancy agreement or the lessor and you did not knowingly, or recklessly publish

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or disclose information that was false or misleading.

You can apply to ACAT to seek orders to disallow the retaliatory notice to vacate prior to the date you are requested to move out.

Defending a Termination and Possession Application

If you fail to vacate the premises when the Notice to Vacate' expires, the landlord can make an application to ACAT for a Termination and Possession Order.

Applications to terminate a tenancy are listed for a hearing, normally on Wednesdays. They are not listed for a conference before the hearing, so it is important to be prepared to defend the termination application at the hearing.

If you receive an ACAT application, you should read it carefully and prepare a response to the allegations contained in it. If there is evidence to support your version of events (e.g. medical certificates, reports, etc.), you should make copies of these and attach them to your response.

In preparing your response, keep the following questions in mind:

- Was the notice to vacate given in writing?
- How and when did you receive the termination notice? (e.g. by email, by post, verbally etc.) Were you not able to receive the notice?
- Was there a valid ground for termination?
- Does the termination notice include the address of the premises, the date you are required to move out, the ground/s for termination and sufficient particulars to identify the circumstances giving rise to the ground/s?
- Were you given the correct notice period?
- If you did not breach the tenancy agreement and you are in a periodic lease, did the landlord provide any evidence supporting the termination ground?
- Do you have doubts regarding the landlord's genuine intention? Do you think the notice to vacate is retaliatory? If so, you can challenge the

landlord's ACAT application relying on the same grounds mentioned above in *Challenging a Retaliatory Notice to Vacate*

- If you are in rental arrears or there was an alleged breach, was a Notice to Remedy given? Does the Notice to Remedy comply with the legislative requirements?
- Are the allegations in the Notice to Remedy true?
- Did you take any steps to remedy the issues identified in the Notice to Remedy?
- Is your breach of the tenancy agreement so serious as to warrant you being evicted?
- If you are being evicted for failure to pay rent, have arrangements been put in place to pay off the rental arrears? Can you offer a payment plan to the landlord that could avoid eviction?
- Will you suffer hardship if evicted? Do you have alternative accommodation? Why would it be difficult for you to find alternative accommodation?

If your landlord is applying for a Termination and Possession Order due to your failure to pay rent, ACAT has an option to make what is known as a Payment Order instead of evicting you. The effect of a Payment Order is that you are required to make specified payments against the rental arrear, and if you default in those payments, the landlord may apply to ACAT for a Termination and Possession Order.

If your landlord is applying for a Termination and Possession Order on the basis that you have used the premises for an illegal purpose, or permitted the premises to be used by another for an illegal purpose, ACAT can make the order if they are satisfied that the premises was used for illegal purposes. ACAT must also be satisfied that the illegal use of the premises would justify the termination order being made. In deciding whether or not a termination and possession order would be justified, ACAT will consider the nature of the illegal use, any previous illegal use of the premises by the tenant, and the tenant's history.

It is important to remember, just because your landlord files an application for a Termination and Possession

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Order, that does not mean you do not have the chance to dispute the allegations.

ACAT has discretion to refuse a landlord's eviction application even if the landlord can prove you were in breach of the tenancy agreement.

If you have any questions arising out of the information provided in this fact sheet, or you are served with a Notice to Vacate' or an application for a 'Termination and Possession Order', contact the **Tenancy Advice Service** at:

1300 402 512 or TAS@legalaidact.org.au

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