

## Scope

This policy outlines how the end of a tenancy is conducted by Pacific Link Housing Limited (PLH) according to legal requirements of the Residential Tenancies Act 2010 and the Residential Tenancy Agreement. This policy applies to all tenancies.

## Purpose

The policy is intended to ensure that tenancy terminations are carried out in a way that:

- Tell our tenants about their rights and responsibilities when we give them notice to end their tenancy or start legal action that may end their tenancy
- Tell our tenants how they can access advice about their tenancy and make sure that they have access to interpreters if needed, and
- Meet our legal duties when ending a tenancy and dealing with goods that our tenants leave behind.

Pacific Link Housing operates to support vulnerable tenants to sustain their tenancies. While NSW Civil and Administrative Tribunal (NCAT) action and eviction may be the result in some circumstances, in the majority of cases all steps will be taken to assist a tenant to keep their tenancy.

## Reasons for Ending a Tenancy

PLH recognises there are several reasons tenancies may end. Some of these are initiated by the tenant, where they wish to leave their tenancy and move into the private rental market, into an aged care home or to move to another area. On other occasions it may be necessary for Pacific Link to initiate ending a tenancy due to a leasehold property being taken back by the landlord for sale; ending a fixed term transitional tenancy or in the case of a Management of Portfolio transfer. In these situations, PLH will issue notice in accordance with the Residential Tenancies Act 2010 and provide all possible support and assistance to the tenant.

PLH may also initiate a termination of a tenancy where there is a breach of the Residential Tenancies Act 2010, including non-payment of rent or other charges, illegal activity, malicious or negligent property damage or causing nuisance. Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity, support and assistance to rectify the problem and to sustain their tenancy.

## Notice of Termination

When PLH issues a notice of termination, it will, where possible, explain the reason for the termination and a reasonable timeframe for the tenant to vacate the premises. Notice to end the tenancy will be given in writing. The notice may be sent in the mail, hand delivered or put in the property's mailbox.

If the tenant doesn't move out by the date given on the termination notice, PLH will ask NCAT to end the tenancy and to order the tenant to move out of the property. The decision to apply to NCAT must be approved by the Manager, Housing and Maintenance Services.

## When a tenant wants to leave – ending a tenancy on a voluntary basis

Tenants are required to give 14 days written notice to PLH when they decide to leave their tenancy.

The tenant's notice must be in writing, state the address of the property, the date when the tenant intends to move out and be signed and dated.

The tenant will receive confirmation in writing from PLH that their notice to terminate the tenancy has been received.

## Notice Periods

A Termination Notice must specify a termination date in accordance with the notice periods set out below:

No grounds notice to end a periodic tenancy, or Ending a transitional fixed term tenancy	90 days' notice plus 7 days postage
Ending a tenancy due to Management of Portfolio	As required by the Act
Breach of tenancy agreement including non-payment of rent	14 days' notice plus 7 days postage

## When a landlord terminates a Leasehold Tenancy

Where a leased property is legally terminated by an agent or landlord and is not due to the actions of the tenant and if the eligibility criteria are still met, every attempt will be made to rehouse the tenant in another PLH leasehold or capital property before the termination notice expires. Upon receiving formal notice from the landlord, PLH as the head tenant, must then give notice to its tenant. PLH must give the tenant the same notice period as it received according to the notice periods above. Tenants will be made up to two reasonable offers of housing. Refer Allocations and Offer of Housing Policy.

PLH will work with tenants to locate a new property and assess whether the property is suitable and at an appropriate standard. In some circumstances, tenants may wish to be actively involved in finding suitable, alternative accommodation for their household and PLH will provide guidance for tenants seeking to do so. However, tenants will be made aware that, where a tenancy agreement is legally terminated by the owner of the property and the end of the tenancy is not due to the actions of the tenant, the onus is on PLH to rehouse tenants and that tenants are under no obligation to find their own accommodation.

## Transitional (temporary) housing tenancies

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. Pacific Link 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. PLH ensures that tenants are provided with written confirmation of the transitional housing requirements. Both the support agency and PLH will assist the tenant in finding long term accommodation. The Housing Pathways application for these tenants remains live on the NSW Housing Register in recognition of the temporary nature of these tenancies.

## Relinquishing a Tenancy

A tenant may relinquish or be asked to relinquish their tenancy when they are unable to continue living in their property. This will be when the tenant has gone into long term care, rehabilitation or other institutional care or prison for more than three months in line with PLH's Absence from Property Policy and Succession of Tenancy Policy. 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.

### **Transfer or Relocation**

When a tenant is approved for a management transfer or relocation, their existing tenancy will be terminated. The tenant will then sign a Residential Tenancy Agreement before moving into the other property. Refer Housing Transfer Policy and Management Transfer Policy.

### **Eviction proceedings for a breach of the Residential Tenancy Agreement**

Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity and all possible support and assistance to rectify the problem. Where there is a serious breach and the tenant does not rectify the problem, it may be necessary to proceed with action for termination of the agreement and possession of the premises. This action will involve an application for a hearing at the NCAT following due legal process as laid down by the Residential Tenancies Act 2010 and the following principles will apply:

- The tenant will be advised in writing at each step and invited to discuss the situation with their Housing Manager.
- The tenant will be referred to tenancy advice and advocacy services or other advocates as appropriate.
- The tenant will be advised to attend any NCAT Hearings to attempt conciliation.
- Attempts to resolve the issues will continue until the NCAT ruling is made.
- Once the NCAT has made its decision to order eviction, no further negotiations will be entered in to.
- The tenant will be treated with respect and consideration during the whole process.
- The tenant will be given advice on other housing options and referred when possible to support services.
- The PLH Housing Manager will appropriately document all steps in the process.
- The Board of Directors will be notified of evictions in monthly management reporting.

If the tenant doesn't move out by the date ordered by NCAT, PLH will apply for a warrant for possession of the property. The decision to apply for a warrant must be approved must be approved by the Manager, Housing and Maintenance Services. Warrants are carried out by NSW Sherriff's Office.

If a leasehold property's agent or landlord gives PLH a termination notice due to property damage; care or neglect issues; abusive or obstructive behaviours; anti-social behaviour; or other valid reasons as per the Residential Tenancy Agreement; or a combination of all or any of the above, PLH will issue termination notice and may not rehouse the tenant, unless the termination notice is found to be retaliatory or the grounds stated are unfounded.

PLH will advise the tenant of other housing options and assist in placing the tenant back on the NSW Housing Register. Refer PLH Tenancy Behaviour, Breaches and Disputes Policy.

### **Section 85 No Grounds Termination Notice**

Under Section 85 of the Residential Tenancies Act 2010, PLH may apply for a 90 days no grounds termination of a periodic tenancy agreement. PLH 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. The application for a Section 85 notice will only be made in rare and exceptional circumstances.

A Section 85 no grounds termination can only be issued with the approval of the Board on recommendation from the Chief Executive Officer following a review of the tenancy history. All other avenues with the NCAT in relation to termination of the tenancy must have been exhausted and procedural fairness and tenant rights maintained.

Prior to issue of a Section 85 termination notice, to afford procedural fairness to the tenant, PLH will send a letter to the tenant:

- 7 days in advance of issue of the Section 85 notice advising of the date the notice will be issued,
- stating the reasons for the issue of the notice and that PLH is not required to give grounds in the notice,
- stating that PLH has conducted an internal review of the case and the decision to issue the notice,
- stating that PLH is providing a final opportunity to take into account the proposed actions of the tenant to remedy the tenancy problems,
- advising that the tenant may appeal the issue of the notice with the Housing Appeals Committee, and
- inviting a written response from the tenant to be provided within 3 days.

If the tenant does not give vacant possession, PLH can make an application (within 30 days of the termination date specified in the termination notice) to NCAT for termination and possession. Providing the notice was validly given and the tenant has not vacated, Section 85 requires that the NCAT must make a termination order and an order for possession.

### **Abandonment**

Where a tenant has abandoned the property, PLH will take reasonable steps to contact the tenant to confirm that the tenancy has ended. Once PLH is reasonably certain that the property has been abandoned, it can apply to the NCAT for an order declaring that the premises are abandoned and for a change of locks. . Where there is no doubt that the property has been abandoned, PLH can change the locks and take possession.

### **Death of a sole tenant**

The death of a tenant should be reported to PLH as soon as practical. Once notified, PLH will reduce the tenant's rent to \$5 per week, effective from the date of death, and cancel any automatic rent deductions. This nominal "occupation fee" is charged for a maximum of 28 days only. Once the 28 day period has expired, market rent is charged.

Where a sole tenant has died, PLH will seek to promptly identify and confirm the legitimacy of the tenant's legal personal representative (LPR) to deal with in ending the tenancy. In situations where two or more potential LPRs are in dispute as to who will administer the estate, PLH will seek relevant legal advice. Where no next of kin or LPR is known, PLH will contact the NSW Police and/or NSW Trustee and Guardian.

Either party may issue a termination notice for the tenancy according to section 108 of the Residential Tenancies Act for which there is no minimum notice period. PLH may not enter the property of a deceased sole tenant until vacant possession has been offered by the identified next of kin/LPR, or by executing a warrant of possession obtained from NCAT. In all circumstances, access to the property and dealing with the tenant's good will be managed by PLH in accordance with the Act.

In situations where the keys have not been returned by the date nominated by the LPR or within 28 days of the date of death of the tenant, PLH will issue a termination notice under Section 108 of the Act, seeking possession, if required, through application to NCAT.

Where there are other members of the household, they may apply for succession in accordance with PLH's Succession of Tenancy Policy.

### **Property is uninhabitable or destroyed**

When a property becomes uninhabitable due to flood, fire or other causes, termination of the tenancy takes immediate effect.

### **Protections for domestic violence victims**

Tenants who need to escape a violent partner will be able to terminate their tenancy immediately and without penalty in circumstances of domestic violence. Tenants who are victims or a co-tenant who is not the perpetrator will not be held accountable for property damage that occurred during a domestic violence incident.

### **End of tenancy cleaning and repairs**

The tenant is responsible for returning the property to PLH in the condition that it was in at the start of the tenancy (apart from fair wear and tear). After PLH conducts an end of tenancy inspection, we will discuss with the tenant any damage, cleaning issues, or unauthorised changes to the property. We will give the tenant up to 24 hours' notice to fix any issues or clean the property. A daily fee will be charged for each day that the tenant has possession of the property. After 48 hours from the notice date, if the tenant doesn't fix the issues, we will get a contractor to do the work and will charge the tenant for the work.

### **End of Tenancy Process**

Wherever possible when a tenancy is ending the following steps are taken:

1. The PLH Housing Manager will send a letter listing matters to be addressed for return of bond.
2. Arrangements will be made for key collection and a joint inspection of the property using the original condition report as a guide to gauge the current condition of the property within 24 hours of the key return.
3. A rent statement will be issued and the tenant will be given a chance to remedy any rent arrears before the tenant leaves the property.
4. The tenant will be advised of any claim to be made on bond monies for damages beyond normal wear and tear and will be asked to sign a bond release form that PLH sends to the Rental Bond Board.
5. The tenant will be given an exit survey or interview prior to leaving if possible, to establish satisfaction or otherwise with the tenancy, the quality of accommodation, any faults to be rectified, reasons for ending the tenancy and where they are moving to for FACS records.
6. Late Key Return – tenants will be charged a daily occupation rate until keys are returned.

### **Goods or Documents that Tenants leave behind**

Tenants are responsible for ensuring that all of their belongings are removed from the property at the end of the tenancy. Procedures for disposal or storage of goods left behind will be followed according to the Residential Tenancies Act.

PLH will dispose of any rubbish and perishable items without seeking tenant consent, provided that PLH is reasonably sure that what is being disposed of is in fact rubbish.

For other goods, PLH will give the tenant notice that we will dispose of the goods if they are not collected within 14 days. Notice can be given in writing (mailed to a forwarding address if known or to the property in case the tenant is having their mail redirected), in person or over the telephone. If we are unable to contact the tenant, we may leave a notice on the front door of the property. For personal documents, we will give the tenant notice that we will dispose of the documents if they are not collected within 90 days. If the goods are not collected within the timeframe given in the notice we will dispose of the goods or may sell them where this is allowed by law. No goods are to be given or sold to PLH staff or related parties to avoid any perception conflict of interest. Personal documents will be disposed of in an appropriate manner to protect confidentiality.

Generally, goods left behind can be reclaimed free of charge. However, PLH may charge an 'occupation fee' to the person claiming the goods if enough goods were left to prevent PLH from renting the premises. An occupation fee (equal to a day's rent) can be charged for each day the goods are held, whether they are stored on the premises or elsewhere, up to maximum of 14 days, even if PLH chooses to hold the goods for longer. If not paid, the debt will be pursued through the PLH Arrears Policy.

### **Money owed to PLH at the end of a tenancy**

If a tenant vacates a property and owes PLH more than \$500 for rent arrears, debt or the cost of end of tenancy cleaning, gardening, repairs and/or Sheriff's fee, PLH will apply to NCAT for an order for compensation and will ask for a certified copy of those orders. If the amount owed is higher than the NCAT limit, we may take other legal action to recover the money owed.

PLH may record the debt of a former tenant on the NSW Housing Register where we are allowed by law. All applicants for housing assistance who have debts must repay those debts. PLH will still consider the applicant for assistance if they demonstrate their commitment to repay the debt by making regular repayments.

### **Reapplying for Housing Assistance**

Under FACS Housing Pathways, when an applicant for housing has been identified as being previously housed in social housing, their tenancy history will be reviewed to determine their eligibility for social housing or other PLH properties. This review may set certain conditions that the applicant may need to meet before approving a request for housing assistance. PLH must be satisfied that a former tenant has the ability to sustain a tenancy, with or without support. PLH will also consider whether other people who lived with the former tenant can be part of any future household. This applies in cases where a household member in a previous tenancy was responsible for nuisance and annoyance, property damage or acts of violence. The applicant will have to meet specific conditions before a provider can list their application on the NSW Housing Register or be considered for other housing assistance. Applicants may need to provide evidence of their ability to sustain a tenancy.

### **Rent References**

On request, PLH will provide a confirmation of tenancy letter.

### **Complaints and Appeals**



## **CP-43 END OF TENANCY POLICY**

If a tenant is not satisfied with a service provided by PLH or does not agree with a decision it has made, they should first discuss their concerns with their Housing Manager. If they are still not satisfied they can ask for a formal review. Refer Complaints and Appeals Policy.

*Craig Brennan*

Craig Brennan, CEO December 2018