



Occupancy TIPS

Ending an Occupancy Agreement & Eviction

Sometimes things just don't work out.

Sometimes the grantor wants you to move out and you don't. Other times, you want to move out and the grantor wants you to stay!

How do you end an occupancy agreement?

Occupants need to know both their rights and their responsibilities. Read on for some basic things to look out for....

The law

An occupancy agreement can end quickly. If you are uncertain about your rights and responsibilities, look closely at your agreement and any House Rules. There are many ways that an occupancy agreement might be written to bring it to an end. However, the *Residential Tenancies Act 1997* (RTA) requires that all occupancy agreements be consistent with the occupancy principles. The Occupancy Principles are set out in section 71E of the RTA. In relation to ending the agreement, the Occupancy principles require that;

(g) an occupant is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction;

(h) an occupant must not be evicted without reasonable notice; and

(i) the grantor and occupant should try to resolve disputes using reasonable dispute resolution processes.

This means that amongst other things, the occupancy agreement should set out clearly and in writing;

- who can end (or terminate) the agreement,
- when the agreement can be terminated,
- how the agreement can be terminated,
- what notice is required and that the notice must be "reasonable", and
- how that notice must be given.

The ways an occupancy agreement can end

Termination of the occupancy agreement can be described as happening in four different ways. Termination could be;

1. by mutual agreement, or
2. because the premises have become uninhabitable, or
3. by the grantor, or
4. by the occupant.

Read on about the different ways an occupancy agreement might end (or terminate) and how the occupancy principles could apply in different circumstances.

1. Termination by Mutual Agreement

Termination by mutual agreement usually occurs at the end of the contract period. However, if the grantor and the occupant both agree, it is possible to end the occupancy earlier than the agreement actually says.

It is extremely important to record an agreement for a mutual termination (together with the recognition that all liabilities have ended) in writing, and have it signed by both parties. Otherwise, disagreements may arise later about the basis for the termination, when it took effect, or whether any money is owed under the occupancy agreement.

2. Termination if the Premises Become Uninhabitable

Occupancy principle (1)(a) requires that *“an occupant is entitled to live in premises that are reasonably clean, in a reasonable state of repair, and reasonably secure.”* This means that a minimum standard is required for all premises.

Premises might become uninhabitable in a number of ways. If premises become uninhabitable due to no-one's fault, for example because of a fire or a storm, then the occupancy agreement has been frustrated. This means that there is no longer any contract and no more board can be charged.

If you think that the premises are uninhabitable, an order should be sought from the Residential Tenancies Tribunal (RTT). The RTT can declare that the premises are uninhabitable and can also order compensation if board has been charged during that period.

If however, the Tribunal finds that the premises are habitable, but are not in a reasonable state of repair, then they can also order that the premises be repaired and in certain circumstances, board can be reduced. (For more information see *Occupancy Tips: Maintenance, Repairs and Essential Services* and *Occupancy Tips: Having a Dispute?*)

3. Termination by the Grantor: Eviction

There are a number of different issues to be aware of about eviction. An occupancy agreement will usually address these issues, setting out clearly;

- the grounds for eviction, and
- how much notice should be given, and
- any other requirements.

Grounds for eviction

A grantor can terminate the agreement in any way, so long as it is consistent with the occupancy agreement itself, the House Rules if there are any, and the Occupancy Principles.

Occupancy principle (g) says *“an occupant is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction”*. This principle requires that the grounds and process for termination of the occupancy are made clear to occupants. In other words, you could be evicted for any reason (even unreasonable ones), or for no reason at all! So, if it is in the house rules that you can get evicted if you don't wash up, then you can be! No matter how unfair that is.

And in some circumstances, the grantor can evict you for no reason at all!

So, it is worth trying to negotiate with the grantor to limit grounds of eviction to only “serious” breaches of the agreement. Reasonable grounds for eviction could include frequently paying board late or failing to pay board at all.

Notice for eviction

How much notice you will get before the grantor can evict you will be set out in your occupancy agreements and the house rules. However, when notice is given, the occupancy principles require that the notice period must be reasonable.

Occupancy principle (h) requires that an occupant must not be evicted without "reasonable" notice. There are no clear rules about what is "reasonable" notice, and it will depend on the circumstances. In a situation where there is a serious risk to people or property, reasonable notice of eviction might be immediate. In other situations where the grantor wants to renovate the room, then it would be "reasonable" that more notice be given. A reasonable yardstick in non-urgent situations could be the board payment period. So, if you pay board fortnightly, then notice should be at least 2 weeks. At a minimum however, it is worth negotiating with the grantor to have one week's notice if you have not been at fault. This will give you time to find somewhere else to live. Also ask that notice of the grantor's intention to evict you be given to you in writing so that possible confusion is minimised.

Disputes: what do you do if you don't agree?

If there is a dispute about whether the agreement has been breached as the grantor claims, or whether adequate notice was given, try to talk to the grantor about it. If the grantor is not listening or being obstructive, then you can apply to the RTT to resolve the dispute.

Occupancy principle (i) states that *"a grantor and an occupant should try to resolve disputes using reasonable dispute resolution processes"*. If either party fails to attempt to resolve the dispute reasonably, they are in breach of the principles. Try to have included in writing in your occupancy agreement a description of the resolution processes that will be followed if there is a dispute.

For example, if the grantor believes you have breached the agreement, you could ask that the grantor;

- Give written notice that you have breached the agreement, including information about what part of the agreement they think has been breached and why,
- Give you an opportunity to question a grantor's version of events, and/ or
- Give you an opportunity to remedy the situation.

If the grantor evicts an occupant either;

- a) in a way that is inconsistent with the Occupancy Agreement or House rules, or
- b) without being reasonable about trying to resolve the dispute,

the occupant may be able to apply to the Residential Tenancies Tribunal (RTT) to prevent the eviction. The RTT may be able to order that the grantor give back the room and keys to the occupant. Alternatively if the relationship has broken down and you don't want to go back, the RTT might order that compensation be paid.

What about my things?

If you are given an immediate eviction notice, you may not have the opportunity to collect your things. Unless alternative arrangements are specifically set out in the occupancy agreement, the *Uncollected Goods Act* places obligations on the grantor about what they can do with your things.

In general, the law requires that the person who has possession of the occupant's things (or goods);

- will store them safely and securely, and
- before they sell or dispose of them, they will ask the occupant in writing to come and collect their goods (or place an ad in the newspaper if they can't get in contact with the occupant). The notification should also provide information about when and how those

goods will be made available for collection.

If you do not collect your goods within 7 days of that date, the possessor can start disposing of them. When and how the goods can be dealt with depends on what sorts of things they are and how much they are worth.

- Any perishable goods or any goods of less than \$20 in value the possessor can sell, appropriate or destroy **after 7 days**.
- Any goods between \$20 and \$500 in value the possessor can sell, appropriate or destroy **after 1 month**,
- Any goods worth over \$500 the possessor can sell by public auction personal effects (eg photographs/documents) **after 3 months**. While the possessor does not get to keep all the proceeds from the sale of the goods, they are entitled to be reimbursed for the reasonable costs of storing and disposing of the uncollected goods.

4. Termination by the Occupant

The grounds for termination by the occupant and the notice that they should give the grantor, will be set out in the Occupancy Agreement and/ or the House Rules (if any). Occupancy agreements will usually be more flexible than leases, so you might be able to give as little as a few days notice.

Negotiate with the grantor to have the following requirements included in writing in the occupancy agreement;

- how much notice you need to give before leaving, and
- whether written notice is needed, and
- any grounds you might have to leave.

When you do want to leave, make sure that you follow any requirements set out in the occupancy agreement and house rules.

Some general guidelines

- Ensure that all important parts of the occupancy agreement are put in writing!
- Negotiate with the landlord or agent to try to find a mutually agreeable solution to any problems.
- Cooperate with the grantor in reletting the premises.
- Don't simply abandon the premises, this increases the potential for disputes about the condition of the premises.
- Vacate the premises in good order, ensuring that they are clean **and that the keys have been returned.**
- **Read our Occupancy Tips: Bond !**

This is a summary of your rights and responsibilities.

If you have a specific problem, you should seek more detailed advice.

Tenants' Advice Service 6247 2011 free legal advice and information for all ACT tenants

Tenants' Union (ACT)6247 1026
.....www.tenantsact.org.au

Welfare Rights and Legal Centre6247 2177
.....www.welfarerightsact.org

Office of Rental Bonds6207 1178
.....www.rgo.act.gov.au

Residential Tenancies Tribunal6217 4260
.....www.courts.act.gov.au/

Office of Fair Trading6207 0400
.....www.fairtrading.act.gov.au

Housing Review Committee6207 1507
Housing ACT Website www.dhcs.act.gov.au

collective strength through membership
general renting/tenancy information and news
free legal advice and assistance for low income tenants

bond lodgement, return and inquiries

dispute resolution and enforcement of tenancy legislation

complaints against real estate agents

appeals against ACT Housing decisions
Housing ACT policies, general information