



Occupancy Factsheet

Ending an Occupancy & 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!

Occupants need to know both their rights and their responsibilities before they move out.

An occupancy agreement can end rather quickly. If you are unsure of your rights and responsibilities, check your agreement and any House Rules. There are many ways that an occupancy agreement might be written to say how it ends. However, the [Residential Tenancies Act 1997](#) requires all occupancy agreements to be consistent with the Occupancy Principles. The Occupancy Principles are set out in section 71E of the Act. Regarding ending the agreement, the Occupancy Principles state 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 it should set out clearly 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 agreement can happen:

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

Read on about the ways an occupancy agreement might end (or terminate) and how the Occupancy Principles could apply.

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, or later. You and the grantor can even agree to end the occupancy in a way that is inconsistent with the occupancy agreement or the House Rules.

However, 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 and keep a copy. 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 occupancy agreement and no more board can be charged.

If you and the grantor agree that the premises became uninhabitable on x date, then record this in writing, both sign it and keep a copy.

If you think that the premises are uninhabitable but the grantor disagrees, you should seek an order from the ACT Civil and Administrative Tribunal. The Tribunal 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, they can order that the premises be repaired and in certain circumstances, board can be reduced. (See Occupancy Factsheets: [Rent/Board](#) and [Repairs and Electricity, Water and Gas](#) and [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 should address these issues, setting out clearly:

- the grounds for eviction
- how much notice should be given
- 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. If your occupancy agreement is for a fixed amount of time (eg 3 months) or has a set end-date, it would be inconsistent for the grantor to give you notice to leave before that date without a legal basis.

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.

If the grounds for eviction undermine your rights under the Occupancy Principles, such as your right to quiet enjoyment of the premises, you should seek specific advice.

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 of 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, even when notice is set out, 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 logical yardstick in non-urgent situations is the board payment period. So, if you pay board fortnightly, then notice should be at least 2 weeks. It is worth negotiating with the grantor to have two week's notice if you have not been at fault. This will give you time to find new accommodation and move your belongings. Also ask that notice be given to you in writing so that possible confusion is minimised.

DISPUTES: WHAT IF YOU DON'T AGREE?

If there is a dispute about whether the agreement has been breached, or whether reasonable notice was given, try to talk to the grantor about it. If the grantor is not listening or is being obstructive, then you can apply to the ACT Civil and Administrative Tribunal 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 your occupancy agreement include 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
- Give you an opportunity to remedy the situation.

If the grantor tries to evict an occupant:

- in a way that is inconsistent with the occupancy agreement or House Rules;
- where the ground for the eviction does not in fact exist;

- where the amount of notice given before eviction was not reasonable; or
- where the grantor did not try to resolve the dispute without eviction,

the occupant may be able to apply to the ACT Civil and Administrative Tribunal to prevent the eviction. The Tribunal may also decide that the eviction is valid but the notice period isn't, and order that the grantor wait a certain number of days before evicting you. If you have already been evicted, the Tribunal may be able to order that the grantor give you back the room and the keys. Alternatively, if the relationship has broken down and you don't want to go back, the Tribunal might order that compensation be paid, and require the grantor to give you access to collect your goods.

In an occupancy, if the grantor has a ground to evict you and has followed the appropriate processes and given reasonable notice, the police do not need a warrant to remove you. However, if the validity of the eviction or the notice period is in dispute, and you are waiting for a legal decision from the Tribunal, the police should not evict you. If you make an application to the Tribunal, keep a copy of the form so that you can show it to the police.

What about my things?

If you are evicted without reasonable notice, you may not have the opportunity to collect your things. Even if you don't want to challenge the eviction, you will need to find a way to collect your goods.

If there is no process set out in your agreement or House Rules, try to negotiate with the grantor about when you can collect your goods. You and the grantor are obliged to use reasonable dispute resolution processes, so if you write to the grantor requesting, or suggesting, reasonable options to collect your goods, the grantor is obliged to respond. If they do not, you can apply to the Tribunal for an order requiring them to give you access to collect your goods.

If you make an agreement with the grantor, or if the grantor gives you options in writing about when to collect your goods, and you do not take them, the [Uncollected Goods Act](#) will apply. Under the Act, the grantor has to store your goods safely for certain periods of time, depending on the value of the good. They are not allowed to donate, destroy, dump or give away your valuables. After a certain amount of time, the grantor is allowed to sell them, but you are entitled to the profits. **The grantor is NOT allowed to put all your belongings out on the front lawn!**

4. Termination by the Occupant

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

Even if the grounds and process are set out in your agreement, you and the grantor can end the occupancy a different way by mutual agreement, see page 1.

Aside from any grounds given in your agreement, you might be able to end the occupancy if the grantor has breached their obligations under the occupancy agreement.

Such breaches would need to be significant enough to justify ending the occupancy. They might include where the premises are unsafe, or the grantor refuses to carry out repairs, or there is serious interference with your quiet enjoyment. Seek specific advice if you want to end your occupancy.

Some general guidelines:

- Ensure that all important parts of the occupancy agreement are put in writing!
- Try to resolve the problem with the grantor and put any agreement in writing
- Cooperate in reletting the premises
- Don't just abandon the premises
- Leave the premises clean (fill out a condition report and take photos if possible)
- **Return the KEYS** (and get a receipt)
- Read our Occupancy Factsheet: *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 for all ACT renters (tenants and occupants)

Tenants' Union (ACT)	6247 1026	publications, information, workshops, law reform general information and news on tenancy/renting issues
www.tenantsact.org.au		
Welfare Rights and Legal Centre	6247 2177	free legal advice and assistance for low income tenants
www.welfarerightsact.org		
Office of Regulatory Services (Bonds)	6207 1178	bond lodgement, return and inquiries
(Fair Trading)	6207 0400	complaints against real estate agents
www.ors.act.gov.au		
ACT Civil and Administrative Tribunal	6207 1740	dispute resolution & enforcement of tenancy legislation
www.acat.act.gov.au		
Housing ACT information line	6207 1150	ACT public housing enquiries