

# Tenancy Agreement Breach

## Policy

Date effective: 16 December 2016

### 1. Purpose

This policy outlines the Department of Housing and Community Development's ('the Department') approach to breaches of public housing tenancy agreements.

### 2. Scope

This policy applies to all breaches of a public housing tenancy agreement. This policy may not apply if the action was not a breach of the tenancy agreement, such as a one-off complaint or an instance of behaviour not covered by the tenancy agreement.

### 3. Policy

It is the Department's preference that any breach of a tenancy agreement be remedied so that the tenancy can continue.

Any breach of a tenancy agreement condition or part of the *Residential Tenancies Act* can result in termination of the tenancy. However, the Department treats some breaches as less serious and will only seek termination where the tenant has breached the conditions of the tenancy agreement repeatedly or seriously or if they are no longer eligible for public housing. Breaches such as the use of illegal drugs on the premises or extensive damage to the premises are considered serious and are more likely to result in immediate termination.

Some serious breaches will be taken directly to the police or to the local courts, which can halt the Department's termination process until the matter is finalised by the authorities.

Under the *Residential Tenancies Act*, if the Department wishes to act on a breach it must normally send a written notice to the tenant. This is in addition to any warning letters or notifications which are communicated with the tenant. For a notice to be withdrawn, both the Department and the tenant must sign a document stating that the notice has been withdrawn.

#### 3.1. Non-payment of rent

A written warning will be provided to the tenant when rent has been in arrears for seven days. If rent is still in arrears after fourteen days, another written warning stating that unless rent is paid within another seven days a formal notice under the Act will be sent. If the rent is still in arrears after twenty-eight days, a formal notice will be sent.

It is the Department's preference that the breach be remedied so that the tenancy can continue. Tenants will therefore be asked to discuss the breach with staff to arrange payment of the rent. If the tenant cannot pay the full amount they can enter an Agreement to Pay, unless the tenant has a poor rental payment history. Final discretion lies with the Director.

### 3.2. Cleanliness and damage

Tenants have a responsibility under the *Residential Tenancies Act* to not maintain the premises in an unreasonably dirty condition, allowing for reasonable wear and tear, and to not intentionally or negligently damage the premises, ancillary property or common property in unit complexes.

When a breach of the tenancy agreement in relation to cleanliness is identified through an inspection, the tenant will be notified of the requirement to remedy the breach. If the breach is not remedied, the Department may seek termination of the tenancy.

Tenant damage is considered to be any intentional or negligent damage caused or permitted to the premises, ancillary property or common property by the tenant, a recognised occupier, pets, or a visitor. The Department may seek immediate termination of a tenancy for serious tenant damage under section 97(2) of the *Residential Tenancies Act*.

### 3.3. Antisocial behaviour

Under the Red Card policy, demerit points can be issued to a tenancy where an incident of antisocial behaviour is substantiated and constitutes a breach of the tenancy agreement. If a tenancy receives six demerit points, the Department may initiate action to terminate the tenancy. This policy applies to all Department public housing tenants, recognised occupiers and their visitors. Refer to the Red Card policy.

Where a tenant seriously or repeatedly breaches the terms of an Acceptable Behaviour Agreement, termination of the tenancy may be sought in accordance with section 99A of the *Residential Tenancies Act*. Refer to the Acceptable Behaviour Agreements policy.

The Department may take immediate action to seek termination of a tenancy under section 97 of the *Residential Tenancies Act*, where a substantiated incident of antisocial behaviour has, or is likely to, cause serious damage to public housing premises or personal injury to housing staff or contractors or other people in the vicinity of the premises.

### 3.4. Role of the Housing Reference Groups

On some occasions the Department may seek the assistance of the Housing Reference Group in dealing with a tenancy. This will normally be when the tenancy is causing problems for the community or town camp. The role of the Housing Reference Group will be to act as mediators in disputes or assist the Department in applying the appropriate policies.

Depending upon the circumstances, the Department may seek the assistance of an individual member or all members of the Housing Reference Group.

### 3.5. Unlawful use of premises

If a commercial business conducted from a residential dwelling is illegal under the conditions of the tenancy agreement or local laws, the Department will request that the business be halted immediately. Non-compliance with this request may result in termination. However, the Department recognises that a legitimate business may receive complaints without breaching the tenancy agreement. In these instances, the Department will work with tenants to make a business more tolerable to neighbours. See the Home Businesses and Self-Employment Policy.

Under the terms of the *Residential Tenancies Act*, tenants who seriously breach their tenancy agreement through criminal activities may have their tenancy terminated. This is generally automatic in the case of the cultivation or selling of illegal drugs.

#### 4. Discretionary decision making

Discretion can be applied to this policy using the Discretionary Decision Making policy.

#### 5. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the Department, they can access the Department's complaints and/or appeals processes. For further information, please refer to the Complaints and/or Appeals policies.

#### 6. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly. This policy will be reviewed within two years of release.

#### 7. Relevant legislation and documents

##### Legislation

*Housing Act*

*Residential Tenancies Act*

##### Policies

Acceptable Behaviour Agreement policy

Appeals policy

Complaints policy

Discretionary Decision Making policy

Home Businesses and Self-Employment policy

Housing Reference Group policy

Red Card policy

Tenancy Agreements for Public Housing policy

#### 8. Document change control table

Release Date	Version Number	Approved by (position)	Section amended	Category
16/12/2016	2.01	Director Policy	all	Editorial amendments
1/08/2016	2.00	Chief Executive Officer	all	Revised
2/09/2013	1.00	Executive Director, Housing Operational Client Support	all	New separate policy derived from Housing Services Operational Policy Manual, Chapter 11