

## 4.3 Ending the Tenancy when the Tenant Breaches the Agreement

### What is a Breach of the Agreement?

Being in breach of your agreement means you have broken one or more of the rules of your tenancy agreement (lease) with the owner/agent. A tenancy agreement may be verbal or written.

If you breach a condition (rule) of your tenancy, the owner/agent may take action to make you fix the problem and/or for your tenancy to be terminated. The action taken depends on the type of breach. It may involve the issuing of a breach notice, a termination notice and/or an application to court. You may have to pay costs associated with breaking the agreement if your tenancy is terminated because you breach the agreement.

**If you breach the agreement, the owner must take certain steps before they can end your tenancy.**

### Breach Notice

The Notice of Breach of Agreement is the written notice the owner/agent may give you if you have broken any of the terms or conditions of your tenancy agreement. This breach notice can be on a standard form such as a **Form 20: Notice of Breach of Agreement (by tenant)** or a **Form 21: Notice for Non-Payment of Rent** or it can be just a letter, but it must be in writing if the owner wants to take any further legal action against you. *A sample Form 20 and Form 21 have been attached to the end of this chapter.*



The Breach Notice should tell you what the breach is and give you time to fix it. The time given must not be less than 14 days (s 62.). If the breach is not fixed by you in the time stated, the owner/agent may give you a Notice of Termination.

**A breach notice must give you at least 14 days to fix the problem.**

If the breach is for rent arrears, the owner/agent may give you a Notice of Termination straight away, without first giving you a Breach Notice. This Notice of Termination must be on a **Form 1B: Notice of Termination for Non-Payment of Rent (No Notice)** (s 62.). See chapters [3.2 Rent Arrears](#) and [3.8 When the Tenant is in Breach of the Agreement](#) for more information about breach and termination notices.

## Termination Notice

The owner/agent may give you a Notice of Termination if you do not fix a breach within the time given in the breach notice. There are three different Notice of Termination forms, depending in the type of breach. The Notice of Termination is not legal if it is not on the correct form.

The Notice of Termination must be on a **Form 1A: Notice of Termination for Non-Payment of Rent (14 days)** or a **Form 1B: Notice of Termination for Non-Payment of Rent (No Notice)** if the breach was for rent arrears. For breaches other than rent arrears, the Notice of Termination must be on a **Form 1C: Notice of Termination** (s 62.)

**Fixing the breach after the time given in the Breach Notice does not stop the owner from issuing a *Notice of Termination*.**

## Court Application

The owner/agent may apply to court for your tenancy to be ended and to be given back possession of the premises if you do not move out in response to the Notice of Termination (s.71). The application to court must be made within 30 days of the date you were told to vacate on the Notice of Termination. See chapter [4.7 Evictions](#) for more information.

**The owner/agent can't force you out of the premises if you don't move out after getting a Notice of Termination.**

**The owner/agent must get an order from the court to evict you.**

The owner/agent may apply straight to court for your tenancy to be ended if the breach is about serious damage or injury (s. 73). The owner/agent may take this action if they believe you are causing or allowing (or likely to cause or allow) serious damage to the rented premises or injury to the owner, agent, neighbours or their guests. See chapter [4.7 Evictions](#) for more information.

## If I move out is that the end of it?

Not necessarily. A Notice of Termination doesn't mean you are released from the tenancy agreement, it just means you are being told to move out by the owner/agent. A court order doesn't release you from all obligations under the tenancy agreement either.

Even after you move out, you may still be liable for costs associated with breaking the tenancy agreement, for example (see over page):

**Under a periodic tenancy agreement**, the owner/agent may be able to claim compensation if they suffer any loss because of your breach of agreement. For example, rent equal to three weeks notice or until new tenants move in (whichever is less). See chapter [4.1 Ending a Periodic Tenancy](#) for more information.

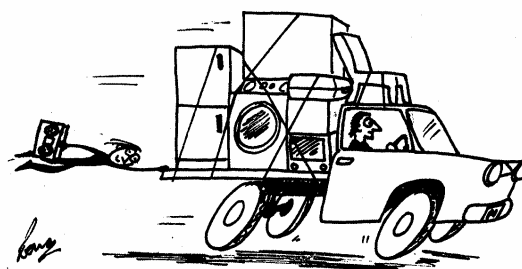
**Under a fixed term tenancy agreement**, you may have to pay costs incurred as a result of ending the tenancy. This may include:

- Rent payments until the agreement expires or new tenants move in;
- Advertising costs if the owner/agent agrees to try and find a new tenant;
- You may also be responsible for the property's condition, inside and outside, until it is re-let or the agreement expires (for example, lawn mowing and watering).

See chapter [4.2 Ending a Fixed Term Tenancy](#) for more information.

Beware of other charges that the owner/agent may try to charge you, such as a “break of lease” fee, a “final inspection” fee or a “re-inspection” fee. Such charges may be unlawful under section 27 of the *Residential Tenancies Act (1987)* which prohibits any charges other than rent, bond, stamp duty\* and a letting fee (if dealing with a real estate agent). \*NOTE: Recent changes to the Stamp Duty Act have resulted in stamp duty no longer being payable on leases executed on or after January 1, 2004.

As a general rule, there is no legal basis for the charging of such fees. However, if the agent/owner can show that they have incurred additional expenses or costs as a direct result of you breaching the tenancy agreement, then they may be entitled to claim such costs back from you. For example, the owner/agent may try to charge a re-inspection fee because they had to come to make sure you had fixed up whatever the alleged breach was.



If this is the case, you may still be able to dispute a re-inspection charge if you do not agree that you were in breach in the first place, or that the breach was minor and did not justify the agent coming back to re-inspect. If you feel a re-inspection charge is unfair you should write to the owner/agent and explain why and ask them to reconsider the charge. See chapter [3.13 Writing a Letter to the Owner/Agent](#). You should also seek advice on your individual situation (see chapter [1.12 Community Contacts](#)).

**Other charges such as “break of lease” fee, “final inspection” fee or “re-inspection” fee may be unlawful under Section 27 of the *Residential Tenancies Act (1987)*.**

## What if I want to stay?

You can stay until the owner/agent applies to court and a decision is made about your situation. You should go to court to tell your side of the story and explain why you think your tenancy should not be terminated.

You can dispute the termination in court if (for example):

- you have fixed the problem;
- you have not breached the agreement;
- the breach doesn't justify the termination (s. 71 (2)(b));
- you can demonstrate the owner/agent was partly motivated to end the agreement because you had previously complained to an authority or taken steps to enforce your tenancy rights (s. 71 (3)(b)). This is referred to as "retaliation".

The court will advise you of the hearing date and time. You should attend the hearing to tell the court your side of the story. The court can take all the circumstances into account (s.71(2)(b)). See chapters [6.2 Preparing for Court](#) and [6.3 Going to Court](#) for more information. Also see chapter [1.12 Community Contacts](#) for a list of organisations that may be able to assist you.

## Can the owner/agent evict me without a court order?

NO! It is illegal for the owner/agent to evict a tenant without a court order - Penalty \$4000. The Notice of Termination is not an Eviction Order.

**A Notice of Termination will tell you that you have to move out,  
but this does not necessarily end the tenancy agreement.**

### List of Tenants' Rights Manual chapters referred to in this info sheet:

- [1.12 Community Contacts](#)
- [3.2 Rent Arrears](#)
- [3.8 When the Tenant is in Breach of the Agreement](#)
- [4.1 Ending a Periodic Tenancy](#)
- [4.2 Ending a Fixed Term Tenancy](#)
- [4.7 Evictions](#)
- [6.2 Preparing for Court](#)
- [6.3 Going to Court](#)

### SAMPLE FORMS ATTACHED TO THE END OF THIS CHAPTER:

- **Form 1A: Notice of Termination for Non-Payment of Rent**
- **Form 1B: Notice of Termination for Non-Payment of Rent**
- **Form 1C: Notice of Termination**
- **Form 20: Notice of Breach of Agreement (by tenant)**
- **Form 21: Notice for Non-Payment of Rent**

FORM 1A  
RESIDENTIAL TENANCIES ACT 1987  
Section 61(a)

SAMPLE

**NOTICE OF TERMINATION FOR NON-PAYMENT OF RENT**

(NOTE: This form is **ONLY** to be used if not less than 14 days' notice of breach of the agreement to pay rent has been given.)

TO: .....

(Name of tenant(s))

I hereby give you notice of termination of your residential tenancy agreement and require you to deliver up vacant possession of the premises at—

.....

(Address of rented premises)

.....

(Date on which vacant possession of the premises is to be given)

This notice of **NOT LESS THAN 7 DAYS** is given to you on the ground that you have breached the agreement to pay rent and the rent or any part of the rent due remains unpaid.  
(See section 62 of the Residential Tenancies Act 1987.)

Notice of the breach was given to you on .....

DATE: ..... SIGNED: .....

(Owner/agent)

ADDRESS: .....

..... POSTCODE: .....

**IMPORTANT INFORMATION FOR TENANTS**

- The owner is seeking to terminate your residential tenancy agreement and requires you to vacate the premises on the date specified in this notice.
- This notice has no effect unless you were given a notice specifying the breach of the agreement and requiring payment of the rent not less than 14 days before you were given this notice.
- If you do not vacate the premises, the owner may apply to court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- If you pay the rent due under the agreement after receiving this notice, the payment will not prevent the owner applying in court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- You should contact the owner or the owner's agent immediately to try and resolve this matter.
- You should seek advice immediately if you do not understand this notice or if you require further information.

**TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054**

FORM 1B  
RESIDENTIAL TENANCIES ACT 1987  
Section 61(a)

SAMPLE

**NOTICE OF TERMINATION FOR NON-PAYMENT OF RENT**

(NOTE: This form is **ONLY** to be used if notice of breach of the agreement to pay rent has **NOT** been given.)

TO: .....  
(Name of tenant(s))

I hereby give you notice of termination of your residential tenancy agreement and require you to deliver up vacant possession of the premises at—

.....  
(Address of rented premises)

.....  
(Date on which vacant possession of the premises is to be given)

This notice of **NOT LESS THAN 7 DAYS** is given to you on the ground that you have breached the agreement to pay rent and the rent or any part of the rent due remains unpaid.  
(See section 62 of the Residential Tenancies Act 1987.)

DATE: ..... SIGNED: .....  
(Owner/agent)

ADDRESS: .....

..... POSTCODE: .....

**IMPORTANT INFORMATION FOR TENANTS**

- The owner is seeking to terminate your residential tenancy agreement and requires you to vacate the premises on the date specified in this notice.
- If you pay the rent due under the residential tenancy agreement in full before the date specified in this notice, you do not need to vacate the premises and no further action will be taken.
- If you do not pay the rent due under the agreement in full and do not vacate the premises, the owner may apply to court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- The owner cannot continue an application for a court order if you pay to the owner the rent due under the residential tenancy agreement together with the court application fee in full not less than one day before the court hearing.
- You should contact the owner or the owner's agent immediately to try and resolve this matter.
- You should seek advice immediately if you do not understand this notice or if you require further information.

TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054

FORM 1C  
RESIDENTIAL TENANCIES ACT 1987  
Section 61(a)

SAMPLE

**NOTICE OF TERMINATION**

(NOTE: This form is **NOT** to be used in respect of non-payment of rent.)

TO: .....

(Name of tenant(s))

I hereby give you notice of termination of your residential tenancy agreement and require you to deliver up vacant possession of the premises at—

.....

(Address of rented premises)

.....

(Date on which vacant possession of the premises is to be given)

**ONLY ONE OF THE FOLLOWING GROUNDS IS TO BE SPECIFIED—DELETE THE OTHER THREE**

A. This notice of NOT LESS THAN 7 DAYS is given to you on the ground that you have breached a term of the agreement and the breach has not been remedied. (See section 62 of the Residential Tenancies Act 1987.)

Particulars of the breach are—

.....  
.....

Notice of the breach was given to you on .....

(Note: This notice has no effect unless you were given a notice specifying the breach and requiring that the breach be remedied not less than 14 days before you were given this notice.)

B. This notice of NOT LESS THAN 30 DAYS is given to you on the ground that the owner has entered into a contract for sale of the premises and under the contract he or she is required to give vacant possession of the premises. (See section 63 of the Residential Tenancies Act 1987.)

(Note: This notice cannot be given during the term of a fixed term residential tenancy agreement.)

C. This notice of NOT LESS THAN 60 DAYS is given to you in exercise of the owner's right to give notice without specifying any ground for doing so. (See section 64 of the Residential Tenancies Act 1987.)

(Note: This notice cannot be given during the term of a fixed term residential tenancy agreement.)

D. This notice of NOT LESS THAN 7 DAYS is given to you on the ground (see section 69 of the Residential Tenancies Act 1987) that the premises, or part of the premises—

- \* have been destroyed
- \* have been rendered uninhabitable
- \* have ceased to be lawfully useable as a residence
- \* have been appropriated or acquired by an authority by compulsory process

(\* delete as appropriate)

The owner believes that this ground applies because .....

.....  
.....

(Note: This notice can be given during the term of a periodic or fixed term residential tenancy agreement.)

DATE: ..... SIGNED: .....

(Owner/agent)

ADDRESS: .....

..... POSTCODE: .....

**SEE OVER FOR IMPORTANT INFORMATION**

**BACK OF SAMPLE FORM 1C:**

**IMPORTANT INFORMATION FOR TENANTS**

- The owner is seeking to terminate your residential tenancy agreement and requires you to vacate the premises on the date specified in this notice.
- If you do not vacate the premises, the owner may apply to court for an order terminating your residential tenancy agreement and requiring you to vacate the premises.
- You should seek advice immediately if you do not understand this notice or if you require further information.

**TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054**

**TENANTS ADVICE SERVICE'  
"IMPORTANT INFORMATION FOR TENANTS":**

***Even though a Notice of Termination will tell you that you have to move out by a certain date, the Notice is NOT an Eviction Order.***

*If you receive a Notice of Termination, you can stay until the owner applies to court and a decision is made about your situation. You should go to court and tell your side of the story to the court and explain why you think your tenancy should not be terminated. See chapters 6.2 Preparing for Court and 6.3 Going to Court for more information. Also see chapter 4.7 Evictions for more about eviction orders.*

**The Notice of Termination is not an Eviction Order.**

**It is illegal for any owner to evict a tenant without a court order -  
Penalty \$4000.**

SAMPLE

**NOTICE OF BREACH OF AGREEMENT  
(BY TENANT)**

**SECTION 62**

TO: .....  
(Name of Tenant)

AT: .....  
(Address of Rented Premises)

I, hereby give you NOTICE that you are in breach of the Residential Tenancy Agreement entered into with me on .....  
(date agreement was made)

I claim the breach of the agreement is .....  
.....  
.....  
.....

TAKE NOTICE that I require you to remedy this breach within 14 days of giving this notice.

DATED: ..... OWNER: .....

This notice must be given to the tenant in a manner set out in Section 85 of the Residential Tenancies Act.

**Notes on Section 85 (SERVICE)**

If the matter goes to Court you will have to produce evidence of service. Service may be effected by various means e.g.

- (1) by personal delivery (you may seek the assistance of a bailiff or other process server)
- (2) by post
- (3) by delivery to a resident of the rented premises who is apparently over 16 years
- (4) by delivery to a person who ordinarily pays the rent.

Service may be on any one tenant if there are more than one.

For full particulars regarding the service of notices and documents see Section 85 of the Act.

SAMPLE

**BREACH NOTICE FOR NON-PAYMENT OF RENT**

TO: .....

(Name of tenant(s))

.....

(Address of rented premises)

I hereby give you NOTICE that:

1. You currently owe \$..... in rent arrears and are in breach of your residential tenancy agreement; and
2. I require you to pay this outstanding rent without delay.

DATE: ..... SIGNED: .....

(Owner/agent)

ADDRESS: .....

..... POSTCODE: .....

**IMPORTANT INFORMATION FOR TENANTS**

- Do **not** ignore this notice. If you do not pay the outstanding rent within 14 days the owner can give you a NOTICE OF TERMINATION requiring you to vacate the premises.
- If you believe that your rent has been paid up to date you should show to the owner or the owner's agent your rent receipts or proof of payment and your calculations showing you are not in arrears.
- You should contact the owner or the owner's agent immediately to try and resolve this matter.
- You should seek advice immediately if you do not understand this notice or if you require further information.

TIS (TRANSLATING AND INTERPRETING SERVICE) TELEPHONE 13 1450 AND ASK TO SPEAK TO THE DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION 1300 304 054