

## 4.5 Ending the Tenancy When the Agreement Becomes Frustrated

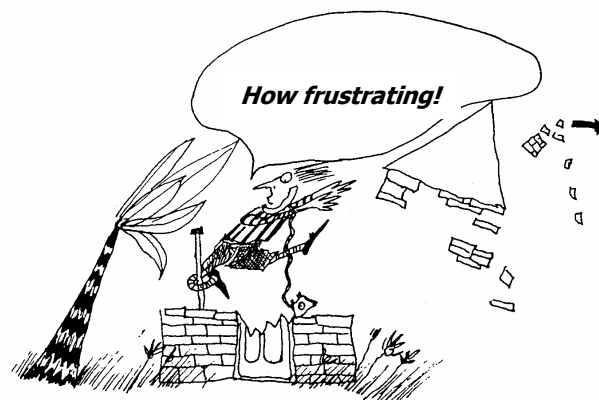
*The Residential Tenancies Act (1987)* provides for the tenancy agreement (periodic or fixed term) to be terminated and/or the rent reduced if the agreement becomes 'frustrated' for reasons other than a breach of the agreement (section 69).

**The agreement may be terminated and/or the rent reduced if the agreement becomes frustrated for reasons other than a breach of the agreement.**

### When can an agreement become 'frustrated'?

The agreement may become frustrated because the premises or part of the premises:

- destroyed, or
- are rendered uninhabitable, or
- cease to be lawfully useable as a residence, or
- are appropriated or acquired by any authority by compulsory process.



This does not apply if any of these situations arises as a result of the tenant breaching the agreement.

Examples of events which frustrate the agreement may include:

- if the house is destroyed by fire, or
- the roof is blown off during a storm, or
- the property becomes zoned for non-residential use, or
- the land is taken over to build a highway.

You may need evidence to prove the premises are uninhabitable (for example, a report by a structural engineer or local council environmental health officer). Get more advice if you think this situation applies to you (see chapter [1.12 Community Contacts](#)).

### Reducing the rent when the agreement is 'frustrated'

When the agreement becomes frustrated otherwise than as a result of a breach of agreement, the rent shall abate (decrease) accordingly. You and the owner should negotiate a rent reduction or waiver. However, if no agreement can be reached, the matter may be referred to Court for a decision.

## Terminating the agreement when it becomes frustrated

Either party can give the other party notice to end the agreement.

- **The tenant** must give the owner not less than **2 days notice** in writing. The written notice can be either a letter or a **Form 22: Notice by tenant of Termination**. The **Form 22** can also be referred to as an example of what to include in your written letter. Keep a copy of the letter or the **Form 22** that you give to the owner/agent in case there is any dispute. You can get a Form 22 from the State Law Publisher (10 William St, Perth. Ph: 9321 7688). *A sample Form 22 is attached to the end of this chapter.*
- **The owner** must give the tenant not less than **7 days notice** by issuing them with a **Form 1C: Notice of Termination of Agreement**. The owner must specify the grounds/reasons for termination on the Form 1C. *A sample Form 1C is attached to the end of this chapter.*

If a tenant has not moved after receiving a Notice of Termination (Form 1C), the owner must apply to the Court to have the tenant removed. The owner may never physically force or lock a tenant out of the premises after issuing a Notice of Termination (Form 1C). The owner may face a \$4000 penalty for forcing the tenant out of the premises without a Court order (s. 80).

**You should leave a forwarding address when you vacate your tenancy, otherwise you could be fined (s.53: Penalty \$1000).**

The forwarding address that you give to the owner/agent need not be the address of your new residence. It may be a PO Box or care of (c/-) someone you can rely to pass mail onto you.

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

- 1.12 Community Contacts
- 6.2 Preparing for Court
- 6.3 Going to Court

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

- **Form 1C: Notice of Termination**
- **Form 22: Notice by Tenant of Termination**

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.**

**FORM 22**  
**RESIDENTIAL TENANCIES ACT 1987**  
**NOTICE BY TENANT OF TERMINATION**

**SAMPLE**

TO: .....  
(Name of Owner)

I hereby give you notice that I intend to deliver up vacant possession of the premises at:

.....  
.....  
(Address of Premises)

on ..... at ..... am/pm  
(date on which tenant intends to vacate premises)

The reason for termination is .....  
.....  
.....  
.....  
.....

The period of notice given in accordance with Section 68 or 69 is  
.....

Date: ..... Signed: .....  
(Tenant)

Address: .....  
.....

NOTE: See over for sections of the Act regarding termination.

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

## BACK OF SAMPLE Form 22: Notice by Tenant of Termination

### SECTION 67

#### Form of notice of termination by tenant

67. Notice of termination of an agreement by the tenant shall—
- (a) be in writing;
  - (b) be signed by the tenant and identify the premises the subject of the agreement; and
  - (c) specify the day on which the tenant will deliver up possession of the premises.

### SECTION 68

#### Notice of termination by tenant

68. (1) A tenant may give notice of termination of an agreement to the owner without specifying any ground for the notice.
- (2) Where a tenant gives notice of termination under this section, the period of notice must be not less than 21 days.
- (3) This section does not apply in relation to an agreement that creates a tenancy for a fixed term during the currency of that term.

### SECTION 69

#### Notice of termination by owner or tenant where agreement frustrated

69. (1) Where, otherwise than as a result of a breach of an agreement, the premises, or a part of the premises, the subject of that agreement are destroyed or rendered uninhabitable or cease to be lawfully usable as a residence or are appropriated or acquired by any authority by compulsory process—
- (a) the rent shall abate accordingly; and
  - (b) the owner or tenant may give notice of termination of the agreement to the other upon that ground.
- (2) Where an owner gives notice of termination under this section, the period of notice shall be not less than 7 days.
- (3) Where a tenant gives notice of termination under this section, the period of notice shall be not less than 2 days.
- (4) Where notice of termination is given under this section in respect of an agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is earlier than the last day of that term.

### 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 place of residence of the owner who is apparently over the age of 16 years
- (4) by delivery to the agent of the owner.

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

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