



# THE BUTTERY

ENRICHING LIVES

## ENDING A TENANCY POLICY

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## 1. POLICY STATEMENT

The purpose of this policy is to explain how The Buttery will end tenancies in accordance with the *Residential Tenancies Act 2010*. This policy applies to all The Buttery's community housing managed properties.

## 2. SCOPE

This policy applies to all tenants of The Buttery.

## 3. DEFINITIONS

<b>Housing Appeals Committee</b>	Means the independent agency that deals with appeals from people who are unhappy with a decision/s made by social housing providers in accordance with the <a href="#">Housing Appeals Charter</a> .
<b>Housing Pathways</b>	The way applications for housing assistance are managed in NSW. It is a partnership between the NSW Department of Communities and Justice and participating community housing providers. Housing Pathways provides: <ul style="list-style-type: none"> <li>• coordinated information about housing assistance,</li> <li>• a single application process,</li> <li>• common eligibility criteria for housing assistance,</li> <li>• a standard assessment process, and</li> <li>• a single waiting list known as the NSW Housing Register.</li> </ul>
<b>NSW Housing Register</b>	Is the single list of approved applications waiting for social housing operated and maintained by the NSW Department of Communities and Justice.
<b>Residential Tenancy Agreement</b>	Means an agreement made under section 13 of the <i>Residential Tenancies Act 2010 (NSW)</i> .

## 4. OVERVIEW

This policy covers ending a tenancy within the legal requirements of the *Residential Tenancies Act 2010* and the Residential Tenancy Agreement.

The policy operates from a service delivery perspective of supporting vulnerable tenants to sustain their tenancies. While NSW Civil and Administrative Tribunal (NCAT) action and eviction may be the result in some circumstances, in the majority of cases all steps will be taken to assist a tenant to keep their tenancy.

The Buttery recognises there are several reasons tenancies may end. Some of these are voluntary, where the tenant indicates they wish to leave their tenancy and move into the private rental market, or to relocate interstate.

On other occasions it may be necessary for The Buttery to initiate ending a tenancy due to the property being taken back by the landlord, sale or termination of a leasehold property, renovations, disposal, or redevelopment. In these situations, The Buttery will issue notice in accordance with the *Residential Tenancies Act 2010* and provide all possible support and assistance to the tenant. The Buttery will always seek to provide a reason for ending a tenancy.

The Buttery may also initiate a termination of a tenancy where there is a breach of the *Residential Tenancies Act 2010*. Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity, support, and assistance to rectify the problem and to sustain their tenancy.

The process of ending a tenancy has considerations in relation to the notice period given, reasons for ending tenancies and management of unclaimed goods.

When The Buttery issues a notice of termination, it will do so in accordance with the *Residential Tenancies Act 2010*, explaining the reason for the termination and a reasonable timeframe for the tenant to vacate the premises.

## 5. POLICY

### 5.1. Reasons for ending a Tenancy

A tenancy is either ended voluntarily through notice or terminated through the NCAT.

There are several reasons why tenancies may end. The most common reasons are explained below.

#### 5.1.1. When a tenant wants to leave – ending a tenancy on a voluntary basis

Tenants are required to give written notice to The Buttery when they decide to leave their tenancy. The minimum notice period for a fixed term tenancy is 14 days for both a 'no grounds termination notice' and a breach of the Residential Tenancy Agreement.

The minimum notice period for a periodic agreement is 21 days 'no grounds notice' and 14 days for a breach of the Residential Tenancy Agreement.

The tenant will receive confirmation in writing that their notice to terminate the tenancy has been received.

A tenant may withdraw a notice to vacate at any time with The Buttery's consent. The tenant may give a further notice on the same or other grounds at a future date.

#### 5.1.2. When a landlord terminates a leasehold tenancy

Where a tenancy agreement is legally terminated by the owner of the property and the end of the tenancy is not due to the actions of the tenant, The Buttery will seek to rehouse the tenant in an alternative Buttery community housing property before the notice expires.

In these instances, The Buttery will work with tenants to locate a new property and will assess whether the property is suitable and at an appropriate standard.

As the property must be handed back to the owner within a defined period, tenants will only be made one valid offer of housing. If this offer is refused, tenants will need to resolve their own housing need.

### **5.1.3. Section 148 termination notice**

Under Section 148 of the *Residential Tenancies Act 2010*, The Buttery has the legal right to terminate a periodic tenancy agreement when a tenant has rejected a reasonable offer of alternative community housing.

If a Buttery tenant rejects a reasonable offer of alternative social housing, The Buttery will undertake a final check to confirm that the offer made to the tenant took into account all of their known housing needs and were consistent with the entitlements set out in the tenant's individual relocation statement.

The processes that The Buttery is legally required to follow when relying on Section 148 to terminate a tenancy, including the review processes, are set out in Sections 149 and 150 of the *Residential Tenancies Act 2010*.

A Section 148 termination can only be issued with the approval of the Corporate Services Manager.

If The Buttery is intending to seek termination of a tenancy under Section 148, the tenant will be provided with a notice of intention to issue a notice of termination under Section 148, and the opportunity to apply for a review of this decision within fourteen days.

If a review is requested, The Buttery will ensure:

1. that the tenant's representations are fully and adequately considered and reviewed during the first-tier review by a Team Leader within seven days of receipt of the application for review
2. that a second-tier review is undertaken by the Housing Appeals Committee within seven days following the first tier review.

The Buttery uses the same criteria under Housing Pathways to guide its approach to reasonable offers and rejection of offers in relation to transfers for management purposes. For more information about the criteria The Buttery applies to decide if an offer is reasonable, (see Tenancy Allocation Policy).

### **5.1.4. Transitional housing tenancies**

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider, typically another Buttery service. The Buttery and the support provider make it clear at the start of the tenancy that the tenancy is for a fixed term and that a notice of termination will be issued to coincide with the last day of the tenancy.

The Buttery ensures that tenants are provided with written confirmation of the transitional housing requirements. Both the support agency and The Buttery will assist the tenant in finding long term accommodation.

The Housing Pathways application for these tenants remains live on the NSW Housing Register in recognition of the temporary nature of these tenancies.

#### **5.1.5. Relinquishing a tenancy**

A tenant may relinquish or be asked to relinquish their tenancy when they are unable to continue living in their property. This will be when the tenant has gone into long term care, rehabilitation or other institutional care or prison for more than three months in line with The Buttery's Absence from Property Policy and Succession of Tenancy Policy.

In these situations, the tenant will receive confirmation that their tenancy has ended and where appropriate will be given information on the circumstances in which a tenancy can be reinstated.

#### **5.1.6. Transfer, relocation, and mutual exchange**

When a tenant is approved for a management transfer or mutual exchange, their existing tenancy will be terminated. The tenant will then sign a Residential Tenancy Agreement before moving into the other property.

## **6. EVICTION PROCEEDINGS FOR A BREACH OF THE RESIDENTIAL TENANCY AGREEMENT**

Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity and all possible support and assistance to rectify the problem.

Where there is a serious breach and the tenant does not rectify the problem, it may be necessary to proceed with action for termination of the agreement and possession of the premises. This action will involve an application for a hearing at the NCAT following due legal process as laid down by the *Residential Tenancies Act 2010*.

### **6.1. Abandonment**

Where a tenant has abandoned the property, The Buttery can apply to the NCAT for an order declaring that the premises are abandoned and for a change of locks. Where there is no doubt that the property has been abandoned, The Buttery can change the locks and take possession.

### **6.2. Death of a sole tenant**

Where a sole tenant has died, The Buttery will liaise with the tenant's family and /or legal representative to deal with the contents of the house and to end the tenancy. Confirmation that the tenancy has ended will be provided to next of kin or the legal personal representative.

In circumstances where the tenant has no family or support, the tenancy can be ended immediately.

Confirmation that the tenancy has ended will be sent to the estate of the tenant.

Succession of a tenancy where there has been the death of a sole tenant will be in accordance with The Buttery's Succession of Tenancy Policy.

### **6.3. Property is uninhabitable or destroyed**

When a property becomes uninhabitable due to flood, fire or other causes, termination of the tenancy takes immediate effect.

### **6.4. Circumstances of domestic violence**

A tenant or their dependent child is in circumstances of domestic violence if they:

- Were the victim of domestic violence offence during the tenancy.
- Are protected by an in-force provisional, interim, or final Apprehended Violence Order (AVO).
- Are protected against family violence by an in-force family law injunction.
- Have been declared by a competent person to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the current tenancy.

The Buttery may require tenants to provide evidence of domestic violence in the form of; a certificate of conviction for the domestic violence offence; family law injunction; provisional, interim, or final DVO; or a declaration made by a medical practitioner in the prescribed form.

### **6.5. Former Buttery tenancies**

At the end of tenancy, a check will be made on any outstanding rental or non-rent debts and any nuisance and annoyance or illegal activities.

The Buttery will take action in the NCAT to recognise any substantial outstanding tenant debt, and these will be recorded against the tenant file in The Buttery system.

Under Housing Pathways, when an applicant has been identified as being previously housed in social housing, they will be referred to their previous social housing provider. Their tenancy history will then be reviewed to determine their eligibility for social housing or other The Buttery properties and any conditions that the applicant may need to meet before approving their request for housing assistance.

The Buttery will need to be satisfied that a former tenant has the ability to sustain a tenancy, with or without support. The Buttery will also consider whether other people who lived with the former tenant can be part of any future household. This applies in cases where a household member in a previous tenancy was responsible for nuisance and annoyance, property damage or acts of violence.

The applicant will have to meet specific conditions before a provider can list their application on the NSW Housing Register or be considered for other housing assistance. Applicants may need to provide evidence of their ability to sustain a tenancy. All applicants who have debts must repay those debts. The Buttery will still consider the applicant for assistance if they demonstrate their commitment to repay the debt by making regular repayments.

## 6.6. Eligible for rental reference

A tenant will be eligible for a rental reference if:

- Rent was paid up to date and has been paid regularly for the previous six months,
- No proven complaints have been received against the tenant,
- Notice has been properly given,
- Property has been left in an acceptable condition, and
- Keys have been returned to The Buttery.

## 7. COMPLAINTS AND APPEALS

This is an appealable policy. If a tenant is not satisfied with a service provided by The Buttery or does not agree with a decision it has made, they can ask for a formal review. To do this, the tenant can lodge a complaint pursuant to The Buttery's Tenant Feedback Policy. This can be downloaded from our website [www.buttery.org.au](http://www.buttery.org.au).

If a tenant is unhappy with the outcome of an appeal to The Buttery, they can lodge a second level appeal with the Housing Appeals Committee. The Housing Appeals Committee is an independent agency that reviews certain decisions made by staff of Community Housing organisations and Housing NSW. For information on the Housing Appeals Committee call 1800 629 794 or go to [www.hac.gov.au](http://www.hac.gov.au).

## 8. RELATED DOCUMENTS

### 8.1. Internal

Document #	Document
GEN.POL.020	Tenant Feedback Policy
GEN.POL.024	Absence from Property Policy
GEN.POL.025	Succession of a Tenancy Policy
N/A	NSW Fair Trading Factsheet



## 8.2. Legislation

- *Residential Tenancies Act 2010 (NSW)*
- *Residential Tenancies Regulation 2019 (NSW)*

## 9. REVISION HISTORY

<b>Version</b>	<b>Date</b>	<b>CQI #</b>	<b>Lead author/ reviewer</b>	<b>Consultative panel</b>	<b>Significant changes</b>
1	11/04/2023	#40	Ari Soemardi	QA Committee	New Policy