

# During a Tenancy Policy

## Purpose and Objective

The purpose of this document is to explain the policy for During a Housing Plus residential tenancy. This includes social housing, affordable housing, and transitional housing.

## Scope

- This policy applies to all tenancies managed by Housing Plus.
- This policy describes the organisation's objectives and policies regarding *During a Tenancy*.

## References

Housing Plus will manage tenancies in accordance with:

- 1) Residential Tenancies Act and Regulations.
- 2) The terms of the residential tenancy agreement.
- 3) Housing Plus policies.

Both the tenant and Housing Plus have rights and obligations under the above Act, the residential tenancy agreement and Housing Plus policies.

## Definitions

### Term: Tenancy Agreement

**Definition:** The Residential Tenancies Act 2010(NSW) (the RT Act 2010) defines a residential tenancy agreement as 'an agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence' (section 13(1)).

### Term: Fixed Term Agreement

**Definition:** A fixed term agreement means a residential tenancy agreement for a tenancy for a fixed term.

### Term: Transitional Housing

**Definition:** Transitional housing is interim accommodation (generally from three months up to eighteen months) that may be provided for people exiting or transitioning from crisis accommodation.

## Responsibilities

### Executive

- 1) Establish policy objectives

### Management

- 1) Develops policies and procedures to achieve policy objectives
- 2) Coordinates and implements policy for *During a Tenancy*
- 3) Oversees training and ensures adoption by all employees responsible for *During a Tenancy*
- 4) Reviews policy and procedure on biannual basis to ensure compliance with legislation and adopts accordingly

### Employee responsibilities

- 1) Understand and comply with Housing Plus policies regarding *During a Tenancy*

## Policy

### Inspections

Housing Plus will conduct all inspections in accordance with the requirements of the *Residential Tenancies Act 2010*, including giving seven days written notice prior to a visit, or two days to undertake necessary maintenance. Home visits may be made at any time, with the consent of the tenant.

LTAP or Property Assessment Surveys (PAS) will be conducted on every property (excluding leaseholds) every two years. Seven days written notice will be given to this. If the tenant refuses access to the premises for Housing Plus staff or contractors after the required notice has been given, Housing Plus may apply to the NSW Civil and Administrative Tribunal for an access order.

In some situations, including emergencies, urgent repairs, required inspections or where there are concerns for the health and safety of any household member, Housing Plus may access a property without the tenant's consent and without an access order. Section 55 and 57 of the *Residential Tenancies Act 2010* outlines where this can occur.

Employees must review risks and warnings prior to attending a dwelling. If a two-person visit warning exists, two employees must attend the property.

### Repairs, Maintenance and Home modifications

For information on repairs and maintenance, including how to report a repair please see Repairs and Maintenance Policy.

### Pets

#### Pets in properties owned by Housing Plus

Tenants who live in properties owned by Housing Plus must seek permission prior getting a pet. Housing Plus will only approve a pet where:

- The property is suitable for the animal, which may be a companion animal, and
- The pet does not interfere with the reasonable peace, comfort and privacy of neighbours, and
- They comply with any council requirements and the *Companion Animals Act*.
- It is permissible under the rules of the local *Strata By Laws*

#### Pets in Headleased Properties

Tenants living in a property that is not owned by Housing Plus or FACS will have to refer to, and abide by, the rules set by the owners of the property. They may not be able to keep pets if they are prohibited by the property owners or strata by-laws.

#### Restricted animals

Tenants may not keep:

- Restricted dogs, as defined by the *Companion Animals Act*
- Dogs that have been declared dangerous by a local council, local court, or under the *Companion Animals Act*.

#### Animals causing nuisance or annoyance

If an animal belonging to a Housing Plus tenant causes a nuisance or annoyance to neighbours, or is not suitable for the property, Housing Plus will ask the tenant to remove it within 48 hours. Failure to remove the pet when asked to do so is a breach of the tenancy

agreement, and may result in action being taken through the NSW Civil and Administrative Tribunal.

### **Being a Good Neighbour**

Housing Plus will assist clients to live in peace and harmony with their neighbours. This policy is aimed at promoting a more peaceful environment in community housing by dealing with issues of nuisance and annoyance, harassment, violence and criminal behaviour that may occur in our housing.

If a client has breached the Residential Tenancy Agreement we may take action against that person's tenancy. The action taken will depend on the seriousness of the breach but in extreme cases we will seek to terminate the tenancy.

Eviction action will only be taken when all other reasonable options have been exhausted, unless the breach has been extremely serious. Every effort will be made to maintain the tenancy. Where there is conflict between clients and their neighbours, they will be encouraged to sort out their problems between themselves or through mediation.

Clients will also be referred to Community Justice Centres for assistance when required. Clients have a right to the peaceful enjoyment of their home and an obligation to abide by the conditions of their tenancy agreement. They also have the right to complain about individuals who deny them that right.

Housing Plus will investigate complaints about clients where there is an alleged breach of the tenancy agreement. If the complaint is substantiated, clients will be given the opportunity to change nuisance and annoying behaviour. We will support the principles of cultural diversity, and we will not tolerate harassment in the form of racial, homosexual or transgender vilification.

### **Running a home-based business from the premises**

Housing Plus will only give approval to operate a business if it is satisfied that both the business and the tenant:

- the property will still primarily be used for residential purposes, and
- the business does not negatively impact any neighbours, and
- Will comply with any relevant laws and local government regulations that apply to operating a business from a residential property, including, where relevant, seeking any necessary approval from the local council prior to starting the business, and
- all income derived from the business is declared to Housing Plus to ensure an accurate calculation of the rental amount.
- Will not increase wear and tear over and above the level that would be normal for a home, or increase utilities (such as non-metered water in flats) that increase Housing Plus' costs, and
- Will not make any alterations or additions to the property without seeking written approval from Housing Plus, and
- Will meet their obligations under the Tenancy Agreement, in particular, where the tenant agrees 'not to cause or permit antisocial behaviour, and not to interfere or cause or permit any interference with the reasonable peace, privacy or comfort of any neighbour', and
- Has a current public liability insurance policy appropriate to the type of business, and
- Will not expose Housing Plus to excessive risk, and

- Will comply with other relevant Housing Plus policies.

Evidence criteria include:

- A document outlining the approval of the local council or any other relevant authorities, and
- A public liability insurance policy certificate.

### Defining a home-based business

The Australian Tax office defines a home-based business is one where you operate the business under either of the following circumstances:

- at home – that is, you carry out most of the business' work at your home, for example, a dressmaker who does all their work at home, with clients coming to their home for fittings
- from home – that is, the business does not own or rent any premises other than your home, for example, a tiler who does most of their work on clients' premises but does not have any other business premises.

There are a range of activities that the ATO describes as home-based businesses (Please note that this does not mean that Housing Plus will approve all types of business):

- Accommodation, cafes and restaurants: Bed and breakfast operator, caterer, campground owner
- Agriculture, forestry and fishing: Shearer, market gardener
- Communication services: Mail service provider, web designer, desktop publisher, graphic designer
- Construction: Bricklayer, plumber, carpenter, tiler, fencer, electrician, builder, engineer, draftsman, cabinetmaker, woodworker
- Cultural and recreational services: Motion picture editor, sound recordist, artist, musician, piano tuner
- Education: Tutor, lecturer, music teacher
- Finance and insurance: Financial adviser, consultant, accountant, bookkeeper, insurance broker
- Health and community services: Dietician, chiropractor, counsellor, physiotherapist, psychologist, massage therapist
- Personal and other services: Personal trainer, photographer, hairdresser, beautician, child-minder, dressmaker, event manager, cake decorator, jeweller, pet groomer
- Property and business services: Plant hire or leasing operator, architect, surveyor, interior decorator, house painter, cleaner, gardener, service and repair operator, sign-writer, tree lopper
- Transport and storage: Courier, freight carrier, removalist
- Wholesale and retail trade: Fresh fruit wholesaler, confectionery supplier, florist, watchmaker, party-plan operator, telemarketer

<https://www.ato.gov.au/Business/Income-and-deductions-for-business/In-detail/Home-based-business/?anchor=Whatisahomebasedbusiness#Whatisahomebasedbusiness>

### Withdrawing approval to run a home-based business from the premises

Housing Plus reserves the right to withdraw approval to run a business from a premises, if the tenant is non-compliant with the above criteria.

### Unauthorised occupants

Under the terms of their tenancy agreement a tenant must advise Housing Plus within 28 days of any change of household membership.

The consequences of an unauthorised occupant may include any or all of the following:

- a. Cancellation of your current subsidy;
- b. The full market rent being charged;
- c. Reassessment of previous subsidies and the resulting debt placed on your rental account; and/or
- d. appropriate action against the tenant under the *Residential Tenancies Act 2010*.

A Tenancy Agreement clearly states how many people are to reside at a property during the term of the tenancy. If any other person moves into a property without the permission of Housing Plus, it is a breach of Clause 15.5 of the Residential Tenancy Agreement. Unauthorised occupants are often the cause of complaints about nuisance and annoyance in the neighbourhood.

### **Visitors**

Tenants may have a person stay as a genuine short term visitor at their property. To be regarded as a visitor the person must provide evidence acceptable to Housing Plus that he or she permanently resides at an alternative address. Such evidence might include a current driver's licence, identity card, current Centrelink statement and/or utility bills in that person's name.

Any person who visits a Housing Plus property for any length of time and who cannot provide evidence acceptable to Housing Plus that they permanently reside at an alternative address is considered to be an unauthorised additional occupant.

### **Supporting Tenancies Experiencing Domestic Violence**

Housing Plus recognises that domestic and family violence can happen to anyone, regardless of social background, disability, age, gender, religion, sexuality or ethnicity.

For further information about how Housing Plus supports tenants experience Domestic and Family Violence please refer to our *Identifying and Responding to Domestic and Family Violence Policy (Community Housing)*.

### **Absence from dwelling**

Housing Plus endeavours to meet the needs of its clients and when a property is provided to a client we expect that they will live in the property.

Clients who will be away from their property for more than 6 weeks must apply for approval from the Tenancy Officer (even if other people will be living in the home) who will assess each case based on the circumstances and such assessment will include:

- a. The rent will be paid,
- b. The property will be looked after and, and
- c. There is a good reason for going away.

If a client is away without approval, Housing Plus may terminate the tenancy as all dwellings are for people in housing need and if persons are not fully utilising their home the property will be made available to other people in housing need.

### **Approval for Absence**

The absence will be approved if we are satisfied that:

- a. Arrangements have been made to pay rent while the client is away. The rent may be pre-paid or paid through Centrelink rent deduction or by direct debit,
- b. The property will be adequately cared for while the client is away and the client will be responsible for any costs to repair vandalism while they are away, and

- c. There is a valid reason for going away. Clients will be required to provide evidence to support their application.

### Acceptable Absences

The following situations will be considered an Acceptable Absence:

- a. Caring for sick/frail family members,
- b. Hospitalisation, institutional care, nursing home care or rehabilitation,
- c. Escaping domestic violence, harassment or threats of violence,
- d. Assisting with immigration matters in the country of origin,
- e. Holidays, and
- f. Employment, education or training.
- g. Absence Due to Imprisonment/ Rehabilitation/Hospitalisation

### Unapproved Absences

If a client has stayed away from their dwelling for more than six weeks without telling Housing Plus, or has stayed away longer than the time Housing Plus has approved, the Tenancy Officer will make reasonable efforts to contact the client to clarify why the client has not returned.

In some cases Housing Plus may:

- a. Charge the Market Rent for the property from the time the property was left, or from the date the approval to be absent from the property expired, and
- b. Take action to end the tenancy.

Clients may appeal a decision made by Housing Plus in relation to absence from dwelling and information will be provided to them upon request.

### Prison

If a single occupant in a tenancy is going to prison, they may apply to retain their tenancy and dependant on the term they will be imprisoned, their application will be considered on its merit.

In cases where a client is imprisoned, the Tenancy Relations Officer will make an application to the Team Leader supporting the client's submission to retain their tenancy. The Team Leader will assess the application on a case by case basis. If the reason for imprisonment is related to a breach of tenancy, action to terminate the tenancy will commence.

In all cases where the term of imprisonment is greater than 3 months the tenancy will be terminated and the client will be advised they are eligible to reapply for tenancy reinstatement following release from prison.

### Mental Health/Drug and Alcohol Treatment/Respite Care

Where a client has decided voluntarily to undergo treatment i rehabilitation for drugs or alcohol staff of Housing Plus will support the client in their decision and consider a rent reduction for the period that is based on evidence the client is in the rehabilitation program and evidence of the financial commitment required.

### Eligibility for \$5 minimum rent

In some situations, Housing Plus will assess a tenant or household member's contribution to the rent payable as \$5 per week. These situations are set out in the Housing Plus Rent Charging Policy.



### Caring for the Property during an absence

The client must appoint a responsible person over the age of 18 years to act on their behalf whilst they are absent from the dwelling. This may be a family member, friend, solicitor, support provider or spouse. The responsible person must inspect the property on a regular basis and ensure it is maintained to the standard stated in the Tenancy Agreement.

If the responsible person is not currently a member of the household and wants to stay in the dwelling while the client is away, they must apply to the Tenancy Officer to become an additional occupant, and rent will be assessed on the basis of the original household complement plus the income of the additional occupant.

### Breaches of the Tenancy Agreement

#### Dealing with a breach of the tenancy agreement

Housing Plus will conduct its leasing in accordance with these policies, the lease and the Residential Tenancies Act and will ensure quiet enjoyment by the client of their leased property.

Housing Plus will manage tenancies and specifically the issues of client breaches in ways in which are fair, transparent and effective ensuring that:

- b) We assist clients to comply with the terms of their Residential Tenancy Agreement;
- c) We identify breaches at the earliest possible time;
- d) We investigate all alleged breaches of tenancy;
- e) We deal promptly with all breaches of tenancy, taking into account the impact on us as the landlord, the clients' neighbours and the clients' own well-being;
- f) Where possible, resolve breaches of tenancy without ending the tenancy.

Housing Plus will work with tenants to ensure they meet their obligations under their tenancy agreement. However, where a tenant has breached their tenancy agreement, Housing Plus may:

- a) Negotiate a reasonable repayment arrangement, if the breach relates to non-payment, or late payment of tenancy charges
- b) Negotiate an arrangement for the tenant to stop breaching their tenancy agreement
- c) Apply for a Specific Performance Order from the NSW Civil and Administrative Tribunal
- d) Issue a Notice of Termination
- e) Apply for an order of Termination and Possession from the NSW Civil and Administrative Tribunal.

#### The NSW Civil and Administrative Tribunal

The NSW Civil and Administrative Tribunal (NCAT) is an independent decision making body that resolves disputes between landlords and tenants. The NCAT tries to help the parties work out their own solutions to a problem. If this is not possible, the NCAT can resolve the dispute by making orders. These orders are legally binding and must be obeyed.

Tenancies will only be terminated as per the relevant legislation. In the event of failure to pay rent or non-rent costs by a client, the Tenancy Officer will seek repayment of arrears of rent through the NSW Civil and Administrative Tribunal (NCAT).

The Tenancy Relations Officer will continue to work with the client on a solution to their arrears and in maintaining their tenancy. Housing Plus would under usual circumstances seek a Specific Performance Order from the Tribunal. If the client fails to comply with the order, the Tenancy Relations Officer will discuss options with the Team Leader, who may request approval from the Head of Customer Service to apply for a vacant possession order.

Should the client not vacate the premises nor pay all outstanding rent, an application for a warrant of possession will be requested from the NCAT.

In the event of a termination of possession being ordered by the NCAT the Tenancy Officer will continue to take all appropriate and economic steps to recover outstanding rent and any other amounts due to the organisation provided it is economically viable to do so.

### Vacated Accounts and the NCAT

The minimum amount that any NCAT application for vacated accounts should be made for is \$800.00 or more. Following approval from the Team Leader, when an ex-client is working and their workplace is known, end of tenancy costs via a NCAT order for \$800 or more, will be pursued via a Garnishee at the Local Court. Amounts less than this should be detailed on the clients screen as a vacated account to alert staff that the client has a vacated account should they re-register for housing and all attempts should be made outside of the NCAT processes to recover the debt. The process for write off of rent and/or non rent accounts should be applied and the debt submitted to the Chief Financial Officer for write off by the Board of Directors at the end of the financial year.

### Specific Performance Orders

A Specific Performance Order from the NSW Civil and Administrative Tribunal orders a tenant to correct a breach of their tenancy agreement.

Specific Performance Orders may be sought under Section 187 of the *Residential Tenancies Act 2010*, without first issuing a Notice of Termination. For breaches relating to the payment of tenancy charges, Housing Plus will generally apply for an order under this section when one or more of the following applies. The tenant has:

- An arrears history that indicates a pattern of not maintaining arrangements.
- Not provided acceptable reasons for not maintaining an arrangement.
- Refused to enter into a reasonable repayment arrangement.
- Not responded to reasonable attempts by Housing Plus to contact them.

### Notices of Termination

A Notice of Termination for a breach of the tenancy agreement is issued under Section 87 of the *Residential Tenancies Act 2010*. A Notice of Termination requires the tenant to vacate the premises on a specific date because they have breached their tenancy agreement.

Housing Plus may issue a Notice of Termination where one or more of the following applies.

A tenant has:

- Not responded to reasonable attempts by Housing Plus to contact them.
- Not presented or been available to discuss the breach of their tenancy agreement.
- A history of breaching Specific Performance Orders.
- Received two Strike Notices and a further substantiated incident of antisocial behaviour has occurred within 12 months.
- Refused to enter into, or not maintained, an arrangement to stop or rectify the breach.
- Not complied with an order issued by the NSW Civil and Administrative Tribunal.
- Committed a serious breach of the residential tenancy agreement justifying the issue of a Notice of Termination.



### Orders of Termination and Possession

An Order of Termination legally ends the tenancy on a certain date. An Order of Possession sets a date by which the tenant must vacate.

Housing Plus will apply for an Order of Termination and Possession where:

- A Notice of Termination has been issued and the tenant has failed to vacate the property, and
- The tenant has failed to comply with orders issued by NSW Civil and Administrative Tribunal, and
- The tenant has refused to rectify the breach, for example, the tenant has refused to repay their arrears, and
- All other steps to sustain the tenancy have failed, or
- The breach is so serious that termination is warranted without the issue of a Notice of Termination.

If a tenant fails to move out of the property by the date in the possession order, Housing Plus will apply for a Warrant of Possession for the NSW Sheriff's Office to evict the tenant.

Under Section 89 of the *Residential Tenancies Act 2010*, an order of termination or warrant of possession no longer applies if a tenant fully repays the debt owed or enters into an arrangement satisfactory to Housing Plus.

However, if a tenant has frequently failed to pay rent Housing Plus may decide to request the application for the termination be heard under Section 89(5) of the *Residential Tenancies Act 2010*. This section allows the NCAT to make an order of termination and issue a warrant of possession that takes effect even if the tenant later repays the debt.