

## H24. DURING A TENANCY - BREACHES

Content:	Illawarra Aboriginal Corporation Policies and Procedures
Version:	2.0
Section:	Housing
Applies To:	Board, Management and Staff of all IAC Services
Date:	October 2015 (Review October 2018)

### Background and Purpose

The IAC's Housing policies articulate our aims, goals and philosophies in providing housing services for Aboriginal tenants and their families. They explain how the Illawarra Aboriginal Corporation works with its staff and other agencies to ensure that our tenants are afforded the best and most appropriate services and that we meet all of the requirements of the Aboriginal Housing Office and the Office of Community Housing.

### Breaches of the Tenancy Agreement

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

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

When the IAC has a problem with a tenant that it has been unable to resolve, it may apply to the NCAT for a hearing. If a tenant has a problem with the IAC, they may also apply to have the matter heard by the NCAT.

The NCAT will make a decision on the basis of the evidence presented to it. The IAC must have sufficient evidence before taking a case to the NCAT.

### Specific Performance Orders

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

SPOs 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, the IAC 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 the IAC to contact them
- Not presented or been available to discuss their arrears

For breaches other than the payment of tenancy charges, the IAC will generally apply for an order under this section when one or more of the following applies. The tenant has:

- Not previously breached their agreement.
- Agreed to stop or rectify the breach

The IAC may also apply for a Specific Performance Order after a Notice of Termination has been issued and the tenant has not vacated. Generally, the IAC will apply for these orders instead of an order terminating the tenancy when:

- The breach relates to tenancy charges and the tenant has agreed to a reasonable repayment arrangement, or
- The tenant has agreed to stop or rectify the breach, and
- The tenant does not have a chronic history of arrears or other breaches.

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### 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.

*The IAC will issue a Notice of Termination where one or more of the following applies. A tenant has:*

- Not responded to reasonable attempts by the IAC to contact them.
- Not presented or been available to discuss the breach of their tenancy agreement.
- A history of breaching Specific Performance Orders.
- 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.

### Notices of Termination (cont)

Under Section 88(3) of the Residential Tenancies Act 2010, a Notice of Termination issued to a tenant for non payment of rent must advise the tenant that if the debt is repaid in full or an agreement satisfactory to the IAC is made, the tenant will not have to vacate the premises unless the Tribunal makes a termination order on the basis that the tenant has frequently failed to pay rent on time.

*The IAC will serve Notices of Termination in accordance with Section 223 of the Residential Tenancies Act 2010 which states that the Notice should be:*

- Delivered to the tenant personally at their IAC dwelling.
- Delivered to a person over 16 years of age at the tenant's IAC dwelling.
- Delivered in an envelope addressed to the tenant left in the mailbox at the tenant's IAC dwelling.
- Sent via facsimile to the tenant's fax number.

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### 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.

*The IAC 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, the IAC will apply for a Warrant of Possession for the NSW Sheriff's Office to evict the tenant.

### Orders of Termination and Possession (cont)

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 the IAC.

However, if a tenant has frequently failed to pay rent, the IAC 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.

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### COMPLIANCE

*This policy complies with:*

- NSW Housing Act 2001
- NSW Residential Tenancies Act 2010

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### REFERENCES

*This policy should be read with:*

- **Housing NSW** "During a Tenancy Policy"
- **National Regulatory Code** - 1. Tenant and housing services