

## H30. ENDING A TENANCY

Content:	Illawarra Aboriginal Corporation Policies and Procedures
Version:	1.0
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.

### Principle

Tenants can expect the Illawarra Aboriginal Corporation to comply with the rights and obligations of a landlord under the Residential Tenancies Act. The IAC expects tenants to comply with the terms of their tenancy agreement. The intent of this policy is to explain how a tenant or the IAC can end a tenancy

### Reasons for ending a tenancy

*A tenancy may be ended for a number of reasons, including:*

- the tenant provides notice that they are vacating the property and provides vacant possession (i.e. the tenant and all household members have moved out of the property and taken their belongings with them). This includes situations where:
  - ◊ the IAC relocates or transfers a tenant
  - ◊ tenants mutually exchanges properties
  - ◊ the IAC approves succession of tenancy
- the tenant abandons the property
- the tenant has passed away and the IAC has obtained vacant possession
- the IAC asks the tenant to vacate the property. This may occur where:
  - ◊ the tenant has breached their tenancy agreement and the IAC has obtained an Order for Termination of the tenancy and possession of the property
  - ◊ the tenant is no longer eligible to live in IAC housing
  - ◊ the tenant rejects a final offer of alternative housing

### A tenant's obligations when they end their tenancy

Tenants may end a fixed term lease before it is due to end if they obtain the agreement of the landlord. The IAC will always agree to ending a lease early if a tenant wishes to move out before the end of their fixed term providing:

- the tenant gives the IAC 14 days written notice of their intention to vacate, and
- the notice specifies the date the tenant wants the tenancy to end and the end date allows for the correct number of days for giving notice

Tenants may end a continuous lease by giving the IAC 21 days written notice of their intention to vacate.

The tenant must leave the property clean and tidy and in the same condition it was in at the beginning of the tenancy, allowing for fair wear and tear. 'Fair wear and tear' means deterioration over time as a result of reasonable use and the action of natural elements, even though the property receives reasonable care and maintenance.

Tenants are responsible for locking the property and returning all the keys given to them at the start of the tenancy to the IAC.

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### When the IAC ends the tenancy

*The IAC will issue a Notice of Termination when it requires a tenant to leave because:*

- they have breached their tenancy agreement
- it is the end of a fixed term period
- they are no longer eligible for IAC housing

*The IAC will give tenants:*

- notice in writing
- notice in the required time period, as stated in the Residential Tenancies Act 2010
- the reasons for ending the agreement
- a reasonable opportunity to be present at the final property inspection

If the tenant does not move out, the IAC will seek an Order for Termination and Possession from the NSW Consumer and Administrative Tribunal. This order compels the tenant to move out and sets a date for the IAC to take possession of the property.

### Inspecting the property

Close to when the tenant will be vacating, the IAC arrange an inspection of the property with the tenant. During this inspection, the IAC will complete the original property condition report by comparing the current condition of the property with its original condition. If there is any damage to the property beyond fair wear and tear, the IAC will advise the tenant of any repairs costs that they may have to pay.

The IAC will carry out another inspection after the tenant has left and will tell the tenant when this is happening so that they can attend the inspection if they wish. The IAC will document any damage beyond fair wear and tear. The tenant must pay the costs to repair any damage beyond fair wear and tear. If the tenant does not take the opportunity to attend the inspection, the IAC will complete the property condition report in the tenant's absence.

### Outstanding Account Balances

If a tenant moves out on or after the notice period, the IAC will charge rent up to the day before they moved out. If the tenant fails to return the keys on a prearranged date and they return the keys later during that week, the IAC will charge rent to the date the tenant gives vacant possession.

If a tenant moves out within the notice period, the IAC will charge rent up to the date the tenant gives vacant possession. If a tenant moves out without giving any notice, the IAC will charge rent up to the date that it obtains vacant possession of the property. If the IAC evicts the tenant, or if the property becomes uninhabitable, the IAC will charge rent up to the end of the last day the tenant had possession of the property.

When a tenant vacates a property for any reason, they will be required to pay any outstanding charges on their tenancy accounts.

The IAC reserves the right to seek recovery of any outstanding debts through repayment plans, debt collection agencies or court orders.

### Housing Sub Committee

All matters regarding the ending of a tenancy by the IAC will be conducted through the Housing Sub Committee and reported to the Board. The Housing Sub Committee will ensure that tenants are treated fairly and with respect and will allow them all opportunity to rectify breaches and to appeal to the IAC.

Where practical, the Housing Sub Committee will also request tenant agreements for the repayment of any outstanding debts before elevating the debt recovery process to involve court action.

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### Abandoned property

The IAC will consider that a tenant has abandoned a property only if it is clear that the tenant is not living there.

*The IAC usually finds out that a tenant has abandoned their property through:*

- neighbours advising the IAC that no one is living there
- the tenant not maintaining the property
- the tenant not paying rent

If the IAC suspects a tenant has left their property without giving notice, it will inspect the property and make enquiries to find out if the tenant has abandoned it.

If the IAC is reasonably sure the tenant has abandoned the property, it will start action to take possession of the property so that it can make the property available for another client.

The IAC has the right to seek compensation at the NSW Consumer and Administrative Tribunal for loss of rental income and property damage.

### Abandoned goods

If non perishable goods remain in the home two working days after the tenant has moved out, or when a property is abandoned, a staff member from the IAC and a witness (where possible) will inspect the property and make a detailed list of the goods left in the home and the condition of those goods. They will take photographs of the goods, particularly if they are of high value.

If the estimated value of the goods is less than the cost of removing, storing and selling them, the IAC will dispose of the goods. If the estimated value of the goods is greater than the cost of removing, storing and selling them, the IAC will remove and store the goods.

### Abandoned goods (cont)

If an item is on hire, the IAC will notify the company who owns it and arrange for the company to collect it.

Within seven days of removing the goods from the home, the IAC will give written notice to the tenant that the goods are in storage. The IAC will send this notice to the tenant's last known forwarding address or to another person the tenant nominates and make any other legally required notifications (eg in newspapers).

Once the goods have been stored for 30 days, the IAC may sell the goods at public auction. The IAC will use the proceeds from the auction to pay for the cost of removing, storing and selling the goods. If there is any money left over, the IAC will credit it to the tenant's rent account.

Under no circumstances will the IAC give or sell any goods to an employee of the IAC, their relatives, friends, or agents.

The former tenant can claim and collect some or all of the goods while they are in storage. Where the former tenant claims all of the goods, they must pay the cost of removing and storing the goods. Where the former tenant claims some of the goods, they do not need to pay the cost of removal and storage of the selected items if the value of the unclaimed items will cover the costs of removal, storage and sale of all the items.

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### Former tenants who are ineligible for IAC housing

Former tenants who are ineligible for IAC housing include those who were evicted for extreme breaches of their tenancy agreement, who vacated before an Order of Possession for an extreme breach could be enforced, or who vacated before an Order of Possession was obtained for an extreme breach that has been substantiated by written verification from the NSW Police.

*Extreme breaches may include:*

- illegal activities carried out by the tenant or a member of their household on IAC's premises. Conducting an unauthorised business is an illegal use of the premises however it is not an illegal activity unless the business itself is unlawful
- the tenant or a member of their household was convicted of arson or deliberate damage of an IAC property
- physical attacks or serious verbal threats directed at neighbours or IAC staff or its agents made by the tenant or a member of their household

Only the Board of the IAC can determine whether a former tenant is ineligible for future IAC housing due to a serious breach of their previous tenancy.

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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** "Changing a Tenancy Policy"
- **National Regulatory Code** - 1. Tenant and housing services