

C.1.11 Breach of Tenancy Policy and Procedure

1 Purpose

- 1.1 This policy is to ensure that the Company and Co-op follows legal requirements of the Residential Tenancies Act 2010 and other relevant legislation and respects the principles of natural justice for tenants relevant to breach of tenancy.
- 1.2 This policy specifies a number of actions that the company and Co-op would consider to be breaches of tenancy.

2 Scope

- 2.1 Applies to all staff
- 2.2 Applies to co-operatives
- 2.3 Applies to all tenancies

3 Exceptions

Nil

4 Definitions

- 4.1 **Landlord** -the person who grants the right to occupy residential premises under a residential tenancy agreement.
- 4.2 **Co-op** -governance structure where residents become 'members' of the co-operative and play an active part in running the organisation.
- 4.3 **Tenant** -the person who has the right to occupy residential premises under a Residential Tenancy Agreement.
- 4.4 **NCAT** – NSW Civil & Administrative Tribunal, is the main forum for resolving tenancy disputes between landlords and tenants in New South Wales.
- 4.5 **NTT** – Notice to Terminate- legal notice to provided to tenants to formally end a tenancy
- 4.6 **CDT**- Co-op Development Team
- 4.7 **CENSW**- Common Equity NSW

5 Responsibilities

- 5.1 **Operations Manager** is responsible for providing resources and having oversight of the process.
- 5.2 **Manager, Co-op Development** is responsible for ensuring staff are appropriately trained and competent, monitoring performance and adherence to policy and legislation.

C.1.11 Breach of Tenancy Policy and Procedure

- 5.3 **Staff and Co-operative Boards** are responsible for adherence to the policy and relevant tenancy legislation.

6 Policy Statement

- 6.1 The Landlord will treat tenancy breaches in line with the Residential Tenancies Act 2010 and other relevant legislation.
- 6.2 The Landlord will apply the principles of natural justice when investigating breaches of tenancy agreement.
- 6.3 The Landlord considers the following to be breaches of tenancy-for a more exhaustive list of tenant's responsibilities see the Residential Tenancies Act 2010:
- 6.3.1 Damage to landlord property by the tenant or invited guests.
 - 6.3.2 Dumping rubbish (debris, furniture, or disused household appliances) in any areas not designated for such use
 - 6.3.3 Nuisance and disturbance to other tenants, by tenants, members of their household and their invited visitors.
 - 6.3.4 Subletting or assigning of the tenant's accommodation without the consent of the Landlord.
 - 6.3.5 Using the property for illegal purposes.
 - 6.3.6 Making any unauthorized alterations to internal or external walls, ceilings, and floors without the landlord's permission.
 - 6.3.7 Keeping a pet without the Landlord's permission.
- 6.4 CENSW as the Landlord/or as the housing provider (on behalf of the Co-op) can lodge an application to the NCAT for a performance order or a termination notice.
- 6.5 To make a termination order for breach, NCAT must be satisfied that:
- 6.5.1 The tenant has breached the residential tenancy agreement, and
 - 6.5.2 The breach is, in the circumstances of the case, sufficient to justify termination of the agreement, and
 - 6.5.3 The termination notice was given in accordance with the requirements and the tenant has not vacated the premises as required by the notice.

C.1.11 Breach of Tenancy Policy and Procedure



7 Procedure

Steps	Who is responsible	When
<p>1. Determining a breach has occurred – CDT are to discuss with the Manager to determine if a breach has occurred and appropriate next step</p> <p>Co-ops are encouraged to make contact with CENSW before issuing a NTT for advice and clarification as required</p>	<p>Co-op Development Officer (CDO)</p> <p>Tenancy Committee Treasurer</p>	<p>Before NTT is issued</p>
<p>2. Has the breach been discussed with the tenant? Determine if a genuine attempt to contact and discuss a remedy been made and failed?</p>	<p>CDO</p> <p>Tenancy Committee Treasurer</p>	<p>Before NTT is issued</p>
<p>3. If remedy attempt failed, complete the NTT. Remember to:</p> <ol style="list-style-type: none"> Give the tenant adequate information to help them understand the breach and ways to remedy Consider if the NTT is an effective way of stopping the breach. Complete the NTT accurately giving adequate notice as per legal requirements and providing as much detail as possible. 	<p>CDO</p> <p>Tenancy Committee Treasurer</p>	<p>Before NTT is issued</p>
<p>4. Serve the NTT on the Tenant with the explanatory letter enclosed.</p>	<p>CDO</p> <p>Tenancy Committee</p>	<p>By <u>mail</u> allow for <u>21 days</u> from date of service to expiry for most matters (this covers you for the seven working days postage required in addition to the 14 days' notice period.</p> <p>By <u>Hand</u> allow for only the minimum <u>14 days</u>.</p>

C.1.11 Breach of Tenancy Policy and Procedure

5. Contact the tenant to discuss the breach and to determine a mutually agreeable way forward to remedy before application to NCAT is made.	CDO Tenancy Committee	Before NCAT application is made
4. If breach persists with no adequate agreement to remedy - make NCAT application	CDO	Within 30 days of vacating date on termination notice

8 Data Collection

8.1 All tenant correspondence, including NCAT orders will be placed on the tenant file and recorded in Greentree.

9 External References

- Residential Tenancies Act 2010
- www.ncat.nsw.gov.au

10 Internal Related documents

- CCA
- Tenants' Rights Policy
- CENSW Rent and Rebate Policy and Procedure

11 Forms

- Notice to Terminate (template)
- Request that Tenant Remedies the Breach (template)
- Explanation Sent with Notice to Terminate (letter)

Name, Designation and Signature of Approver	Corine Addison, Ops Manager
Contact/Responsible Delegation	Co-op Development Manager
Date	October, 2020
Date Committee/Board Approved	n/a
Date Staff Informed	13 October 2020
Upload to Website and Date	October 2020
Review Date	October 2023
Version	2