

Policy name	Ending Tenancies
Policy date	August 2020
Authorisation	General Manager, Operations
Policy owner	National Manager, Housing Services
Policy type	Mission Australia Housing operational policy
Policy setting	

1 Purpose

1.1 Overview

- 1.1.1 This policy outlines the approach to be adopted where Mission Australia Housing (MAH) tenancies are ended by tenants, or by MAH.

1.2 Coverage

- 1.2.1 This document is a national policy and covers both Mission Australia Housing (MAH) and Mission Australia Housing Victoria (MAHV). All references to Mission Australia Housing, MAH and Housing include both MAH and MAHV unless specifically stated otherwise. Where state based variations exist in policies and procedures, these will be identified in the document.
- 1.2.2 This policy applies to all forms of housing provided by MAH including social, affordable and transitional housing.

1.3 Information on procedures and other related policies

- 1.3.1 This policy focuses on why certain things need to be done. It is supported by procedures that provide more detail on the “what” to do.
- 1.3.2 Other MAH policies and procedures also need to be considered in managing the end of tenancies. To assist you, these are identified where relevant in this policy and supporting procedures.

2 Scope

2.1 Parts of Mission Australia that this policy covers

- 2.1.1 This policy applies to MAH staff responsible for working with MAH clients, tenants and properties.

2.2 Definitions

2.2.1 Key terms used in this policy are defined in the following table.

Term	Definition
Abandoned goods	Personal belongings that are intentionally or unintentionally left behind by tenants who have vacated or abandoned their property.
Abandoned properties	Properties which tenants have left without providing MAH with appropriate state-based notice of their intention to leave.
Breach of tenancy	Where a tenant, household member or visitor fails to comply with one or more of the terms the tenant agreed to abide by in the lease or rooming accommodation agreement they signed at the start of their tenancy.
Domestic and family violence (DFV)	Any behaviour within a domestic or family relationship that is violent, threatening, coercive or controlling, causing a person or persons to live in fear.
Fixed term agreement	Tenancies under fixed term agreements have a defined start and end date which is agreed to at the start of each fixed term tenancy.
Non-rent debt	Unpaid non-rent expenses incurred during a tenancy that the tenant is required to meet. These include costs for property damage and/or cleaning; replacing keys, swipe cards or remote controls; and water usage charges.
Order for payment	A judgement made by a state-based civil authority which legally binds a tenant to pay a rent or non-rent debt to MAH.
Order for possession	A judgement made by a state-based civil authority which legally binds a tenant to leave a property by a specified date.
Payment plans	An agreement between MAH and a tenant that allows the tenant to pay rental arrears and non-rent debts over an agreed period. Payment plans include information about amounts owing, frequency of repayments and the time allowed for repayment. Where appropriate, they may include special conditions to address any identified root causes of the tenant debt.
Rent arrears	Debt resulting from non-payment of an agreed rental amount.
Vacating a property	A property has been legally vacated if:

Term	Definition
	<ul style="list-style-type: none"> • An appropriate notice has been issued to a tenant or has been received by MAH. • A tenant gives up possession of their property and removes their belongings from the premises at the end of a notice period. • A state-based order has been made declaring a property legally vacated. <p>When a tenant leaves their property without providing appropriate notice, they have not legally vacated their property and have instead abandoned it.</p>
Warrant for possession	A warrant authorising a law enforcement officer to enter a property and take all necessary steps to remove the tenant, their household members and belongings. These warrants are often issued if an order for possession has not been complied with.

3 Policy

3.1 Guiding principles

3.1.1 MAH is focused on the needs of tenants and their families:

- MAH balances the interests of tenants, staff and the community in making decisions relating to the sustainability of tenancies.
- MAH supports tenants to rectify any tenancy management issues, and wherever possible, sustain their tenancy.

3.1.2 MAH protects the value of the assets under its management:

- MAH uses the end of tenancy process to protect the value of its assets.
- Recognising that social and affordable housing is a scarce resource, MAH ensures that properties are not vacant for extended periods of time.

3.1.3 The MAH process for managing the end of tenancies is fair and transparent:

- Tenants are given clear information about the terms and conditions of their tenancy at the start of their tenancy.
- Tenants are informed of the end of their tenancy in advance, to support them to identify and access alternative accommodation arrangements wherever required.
- Tenants are given the opportunity to appeal organisational decisions in order to ensure fair and transparent outcomes.

- 3.1.4 The MAH process complies with relevant laws and procedures. Properties are managed in accordance with the requirements of residential tenancy and rooming accommodation legislation, taking property owner requirements into account.

3.2 Introduction

- 3.2.1 Tenancies end for a variety of reasons, and can be ended by the tenant or by MAH. The process to be followed is influenced by:
- Who gives the notice;
 - The form of tenancy, whether fixed term or a continuing/periodic agreement;
 - The rules applying to the particular housing program;
 - The reasons for the ending of the tenancy; and
 - The laws applying in the particular jurisdiction.
- 3.2.2 The decision to end a tenancy also triggers a set of procedures intended to protect the assets involved, recover any debts and allow a smooth transition from one tenant to the next.

3.3 Tenancies ended by the tenant

- 3.3.1 Tenants may choose to end their tenancy with MAH at any point. To do so, they should:
- Provide written advice to MAH, specifying their vacating date and property address; and
 - Comply with the relevant state-based notice periods. These are set out in the **Ending Tenancies Procedure**.
- 3.3.2 Tenants are not required to provide grounds for ending their tenancy, but may do so where they believe MAH has breached a lease or rooming accommodation agreement. In this case, they should specify the clause/s of their lease or rooming accommodation agreement they believe MAH has breached, and any actions they believe caused the breach.
- 3.3.3 The notice periods set down in the legislation can be varied under certain circumstances.
- In New South Wales, a tenant may end their tenancy immediately, without penalty, if they or their dependent child are suffering domestic or family violence, subject to the provision of certain evidence. This is discussed further in **3.4**.
 - Tenants who are offered housing by another social housing provider are only required to provide seven days' notice.
 - Where a tenant has been unable to give the required notice due to exceptional circumstances, MAH may agree to waive or vary notice periods.

3.3.4 Once MAH has received a notice of intention to end a tenancy from a tenant, staff will send a confirmation letter to the tenant and then follow up with them to discuss the vacating procedure.

3.3.5 Tenants may seek to withdraw their notice at any stage prior to end of their tenancy.

3.4 Domestic or Family Violence

3.4.1 In New South Wales, the Residential Tenancies Act 2010 allows a tenant or co-tenant to end their tenancy immediately, without penalty, if they or their dependent child are suffering domestic or family violence. To end the tenancy, a tenant will need to:

- Provide a domestic violence termination notice to the landlord or the landlord's agent, and attach one of the following permitted forms of evidence: a certificate of conviction for the domestic violence offence; a family law injunction; a provisional, interim or final Domestic Violence Order; or a declaration made by a medical practitioner in the prescribed form.
- Provide a domestic violence termination notice to each co-tenant.

3.4.2 A tenant who ends their tenancy in circumstances of domestic violence is not liable to pay any compensation or additional money for the early termination. For example, a victim does not need to pay a break fee, loss of rent, an advertising or reletting fee, or an occupation fee for abandoned goods.

3.4.3 A co-tenant (other than the perpetrator of the domestic violence) who remains in the tenancy after a tenant gives a domestic violence termination notice:

- May apply to the Tribunal to end their tenancy; and
- Is not required to cover the departing victim's share of the rent for a two-week period.

3.4.4 Tenants subject to domestic and family violence may also apply for a transfer to another property, temporary accommodation or for assistance in taking over the tenancy if their name is not already on the lease. See the **Making Changes to Your Tenancy Policy** for further details.

3.5 Fixed term tenancies

3.5.1 Some housing programs delivered by MAH are short- or medium-term programs whose tenants are placed on a fixed term lease or rooming accommodation agreement.

- Fixed term offers of housing are not permanent offers of housing, and staff will advise tenants of this before they sign a fixed term lease or rooming accommodation agreement for their property.
- Depending on the program in question, it may be possible to establish a new tenancy once a term has ended. However, fixed term tenancies will end on the date stipulated in the written agreement unless MAH provides advice to the contrary.

- Staff should issue written notice as required in the relevant jurisdiction, informing the tenant or tenants of the end of their tenancy and the vacating procedures to be followed.

3.6 Transfers and mutual exchange

- 3.6.1 Transfers and mutual exchange also involve the ending of tenancies, as the agreement on the old property is terminated as part of the move. A transfer is a move by a tenant from one property to another, and mutual exchange is the swapping of properties between tenants. See the **Making Changes to Your Tenancy Policy** for further details.

3.7 Tenancies ended by MAH

- 3.7.1 MAH aims to provide the security of a long-term tenancy wherever possible.
- 3.7.2 In certain circumstances, MAH may seek or be required to end a tenancy. Such circumstances include:
- The death of the tenant. Further information is set out in the **Managing Tenant Deaths Procedure**.
 - Where the property has been abandoned. See the **Abandoned Properties and Goods Policy** for details.
 - Persistent or serious breaches by tenants requiring MAH to take action under the **Anti-Social Behaviour Policy** or **Breach of Tenancy Policy**.
 - Where the tenant is no longer eligible for the housing program they are in.
- 3.7.3 Before MAH makes a decision to end a tenancy on the grounds of persistent breaches, staff are required to work with the tenant involved to attempt to resolve matters and to sustain their tenancy wherever possible.
- 3.7.4 Where matters cannot be resolved and the tenant refuses to vacate a property, MAH may be required to obtain an order or warrant to achieve vacant possession. For further details, see the **Ending Tenancies Procedure**.

3.8 No grounds terminations

- 3.8.1 MAH will normally terminate a tenancy only when there are grounds to do so. However, there are exceptions where MAH may use no grounds provisions in relevant state-based legislation to terminate a tenancy or rooming accommodation agreement.
- 3.8.2 MAH may take action where a support agreement exists between a tenant, MAH and a support provider, and the tenant refuses to engage with support services.
- The tenant will have been made aware at the start of their tenancy that their tenancy is dependent upon them engaging with support.
 - In these instances, MAH will follow a process that will include the tenant receiving written warnings, and meetings being held between the tenant, the support provider and MAH to explain the situation and attempt to find a solution. This

ensures that the tenant receives natural justice, is made aware of the reason for MAH's decision, and is given the opportunity to respond.

- 3.8.3 MAH may take action in affordable housing programs where tenant income eligibility is a condition of MAH's participation in the program. Should the tenant's income exceed the eligibility limit, MAH will give a termination notice in line with state-based legislation and the appropriate affordable housing program guidelines. This will have been made clear to the tenant at the start of their tenancy.
- 3.8.4 MAH may also take action in exceptional circumstances where other avenues with the state-based civil authority in relation to the tenancy have been exhausted. In these instances, applications for no grounds terminations will require approval from the National Housing Services Manager.

3.9 Vacating a property

- 3.9.1 Upon vacating a property, tenants are responsible for ensuring that:
- The property is in the condition that it was in at the start of their tenancy (fair wear and tear excluded);
 - The rent is up to date and there are no non-rent debts; and
 - Keys are returned.
- 3.9.2 Once MAH has received a notice to end a tenancy from a tenant or, alternatively, where MAH provides a tenant with a notice to end their tenancy, housing staff should:
- Review the tenancy to determine whether there are any known problems;
 - Contact the tenant to discuss vacating procedures; and
 - Arrange for an inspection of the property following the approach laid down in the **Inspections Policy** and associated procedures.
- 3.9.3 Where there are no outstanding issues to be addressed at their former property, or where the tenant has satisfactorily addressed any outstanding issues within the approved timeframe and there are no outstanding debts owed to MAH, staff will arrange for the tenant to reclaim the bond as per the **Rents, Bonds and Other Charges Policy**.
- 3.9.4 If there are unresolved issues at the property, or if there are rental arrears or non-rent debts outstanding, staff should follow up with tenant to seek rectification following the steps set out in the **Ending Tenancies Procedure**. This may include action under the **Arrears Management Policy** or the **Bad Debt Management Procedure**, where tenants:
- Vacate their property without attending to maintenance issues that have been identified as tenant responsibility at the property.

- Fail to return their property keys. Where tenants fail to return their keys, MAH may charge rent until their keys have been returned to MAH, or charge for the cost of replacing locks.
- Fail to rectify their arrears and non-rent debts.

3.10 Support for vacating tenants

- 3.10.1 Staff should provide vacating tenants with information on relevant independent legal, tenancy and support services wherever required.
- 3.10.2 Where appropriate, staff should assist tenants to identify and relocate to alternative accommodation.

3.11 Appeals

- 3.11.1 Staff will inform tenants of their right to appeal organisational decisions and to complain about the services of MAH as per the **Appeals and Complaints Policy**.

4 Responsibilities

4.1 Housing staff including Housing Officers and Client Service Officers are responsible for:

- Informing tenants of their rights and responsibilities in accordance with this policy.
- Coordinating the end of tenancy process in accordance with this policy.
- Providing tenants with relevant tenancy, advisory and legal information where required.
- Supporting tenants and/or working with support partners to identify and access alternative accommodation where required.
- Applying MAH debt management and/or arrears management processes where required.
- Keeping records of the process in the relevant systems.
- Recommending improvements to this policy and associated procedures.

4.2 Team Leaders/Regional Managers are responsible for:

- Assisting housing staff to implement this policy.
- Ensuring good management of evidence in the tenancy management system.
- Incorporating this policy and associated procedures into staff induction and training.
- Ensuring staff are aware of and have access to this policy and associated procedures.
- Escalating feedback about this policy to the policy owner and/or policy writer.

4.3 The National Manager, Housing Services is responsible for:

- Ensuring that MAH complies with this policy and associated procedures.
- Recommending any changes to this policy and associated procedures.