

 <p>ACCESS 2 PLACE HOUSING</p>	TERMINATION OF A TENANCY POLICY	
	Policy Number	TM05
	Version	2
	Date	August 2019
	Review Date	August 2021

1. Purpose

This policy sets out how Access 2 Place Housing (A2P) or a tenant can end a tenancy agreement in accordance with the *Residential Tenancy Act (SA) 1995*.

2. Context

The A2P mission is grounded in the intention to provide tenants with sustainable tenancy management services. This means that, in general, A2P will only pursue terminating a tenancy as a last resort after all efforts have been made to support the tenant to redress breaches; or if termination is considered to be in the best interest of the tenant (e.g. a tree falling on the property means that it is now considered unsafe for occupancy).

When terminating a tenancy both A2P and tenant(s) have rights and responsibilities under the *Residential Tenancies Act 1995* and the Residential Tenancy Agreement.

A2P also has responsibilities as a registered National Regulatory System (NRS) Tier 2 Community Housing Provider and National Disability Insurance Scheme (NDIS) Registered Provider to manage tenancies, including the ending of a tenancy agreement, in an appropriate and compliant manner.

3. Scope

This policy applies to all A2P tenants who have signed a Tenancy Agreement for an A2P owned or leased property.

4. Risk

The absence of a *Termination of a Tenancy Policy* could leave A2P and/or tenants at risk of not being fully aware of and/or breaching legislated requirements when making the decision to end a tenancy agreement.

5. Policy Detail

5.1. General

5.1.1. Sustainable Tenancies Approach

A2P will work with tenants to support a sustainable tenancy and will offer tenants opportunities to redress any breaches that may cause A2P to seek a termination of tenancy through the South Australian Civil and Administrative Tribunal (SACAT).

Refer to the *A2P Tenant Engagement Policy* for more information on the A2P sustainable tenancies approach.

5.1.2. Landlord and Tenant Rights and Responsibilities

A2P will comply with the rights and responsibilities of a landlord, in all matters relating to ending a tenancy, in accordance with the *Residential Tenancies Act (SA) 1995*.

A2P expects all tenants to comply with the rights and responsibilities of a tenant, in all matters relating to ending a tenancy, in accordance with the *Residential Tenancies Act (SA) 1995*.

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5.1.3. Risk of Termination Panel

Where a tenancy is at risk of termination, A2P will convene a panel of three staff members. Two members must be from the tenancy team and one must be a senior manager. A2P will not pursue a termination of tenancy unless the panel gives approval.

Refer to the *A2P Risk of Termination Panel Guidelines* (to be developed).

5.2. Termination Generally

5.2.1. Termination of residential tenancy

As per section 79 of the Residential Tenancies Act (SA) 1995 (RTA) a residential tenancy terminates if:

- the landlord or the tenant terminates the tenancy by notice of termination given to the other (as required under the RTA); or
- the Tribunal terminates the tenancy; or
- a person having title superior to the landlord's title becomes entitled to possession of the premises under the order of the Tribunal or a court ; or
- a mortgagee takes possession of the premises under a mortgage; or
- the tenancy terminates by force of a notice to vacate issued in respect of the premises; or
- the tenant abandons the premises; or
- the tenant dies without leaving dependants in occupation of the premises; or
- the tenant gives up possession of the premises with the landlord's consent; or
- the interest of the tenant merges with another estate or interest in the land; or
- disclaimer of the tenancy occurs.

5.2.2. Agreement continues if not terminated

If a residential tenancy agreement for a fixed term has not terminated before the end of the fixed term or at the end of the fixed term by notice of termination under section 83A or 86A of the RTA, the agreement continues:

- (a) as a residential tenancy agreement for a periodic tenancy with a tenancy period equivalent to the interval between rental payment times under the agreement; and
- (b) with terms of agreement that in other respects are the same as those applying under the agreement immediately before the end of the fixed term.

This section does not apply in relation to a residential tenancy agreement to which section 4 of the RTA applies- refer to the Act if further clarification is needed.

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5.3. Termination by the landlord

5.3.1. Notice of termination by landlord on ground of breach of agreement

Wherever possible A2P will seek to work with tenants to redress breaches before proceeding to terminate the tenancy.

5.3.1.1. Written notice of breaches

If the tenant breaches a residential tenancy agreement, the landlord may give the tenant a written notice in the form required by regulation:

- (a) specifying the breach; and
- (b) informing the tenant that if the breach is not remedied within a specified period (which must be a period of at least seven days) from the date the notice is given then:
 - (i) the tenancy is terminated by force of the notice; and
 - (ii) the tenant must give up possession of the premises on or before a day specified in the notice (which, subject to subsection (2)(c), must be at least seven days after the end of the period allowed for the tenant to remedy the breach).

5.3.1.2. Failure to pay rent

If notice is given under this section on the ground of a failure to pay rent please refer to section 80(2) and 80(3) of the RTA for entitlements.

5.3.1.3. Application to SACAT by Tenant

The tenant may at any time after receiving a notice under section 80 of the RTA and before giving vacant possession to the landlord, apply to SACAT for an order:

- (a) declaring that the tenant is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
- (b) reinstating the tenancy.

If the Tribunal is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.

On an application for an order reinstating the tenancy, the Tribunal may make alternative orders providing for reinstatement of the tenancy if specified conditions are complied with but, if not, ordering the tenant to give up possession of the premises to the landlord.

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5.3.2. Termination because possession is required by landlord for certain purposes

A landlord may, by notice of termination given to the tenant, terminate a periodic residential tenancy on certain grounds, refer to section 81 of the RTA for more information.

The period of notice given under this section must be at least 60 days or a period equivalent to the period of the tenancy agreement (whichever is the longer).

A landlord who recovers possession of premises under this section must not, without the consent of the Tribunal, grant a fresh tenancy over the premises within six months after recovering possession.

5.3.3. Termination by community housing providers with members who are tenants

A2P does not currently have members however should that change refer to section 82 of the RTA for more information on requirements.

5.3.4. Termination by landlord without specifying a ground of termination

A landlord may, by notice of termination given to the tenant, terminate the tenancy without specifying a ground of termination. The period of notice under this section must be at least 90 days. However,

- (a) a tenancy cannot be terminated under this section if:
 - (i) it is for a fixed term; or
 - (ii) a housing assessment order, housing improvement order, housing demolition order, preliminary rent control notice or rent control notice applies in respect of the premises; or
 - (iii) an order is in force under section 56 (Excessive rent) of the RTA in respect of the premises or proceedings for such an order have been commenced; and
- (b) a registered community housing provider cannot terminate a tenancy with a member of the registered community housing provider under this section where it is a requirement that the occupant of the premises be a member of the registered community housing provider.

5.3.4.1. Notice to be given at end of fixed term

A landlord may, by notice of termination given to the tenant, terminate a residential tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination. The period of notice under this section must be at least 28 days.

5.3.4.2. Termination where agreement frustrated

A landlord may, by notice of termination given to the tenant, terminate a residential tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the premises or a substantial portion of the premises:

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- (a) have been destroyed or rendered uninhabitable; or
- (b) have ceased to be lawfully usable for residential purposes; or
- (c) have been acquired by compulsory process.

A notice given under subsection (a) or (b) may terminate the agreement immediately. A notice given under subsection (c) must provide for a period of notice of at least 60 days.

5.3.5. Limitation of right to terminate

In prescribed circumstances, there may be a limitation of the right to terminate, refer to section 84 of the RTA for more information.

This section of the RTA does not apply if a notice to vacate applies in respect of the premises.

5.4. Termination by tenant

5.4.1. Notice of termination by tenant on ground of breach of the agreement

If the landlord breaches a residential tenancy agreement, the tenant may give the landlord a written notice, in the form required by regulation:

- (a) specifying the breach; and
- (b) Informing the landlord that if the breach is not remedied within a specified period (which must be a period of at least seven days) from the date the notice is given the tenancy is terminated by force of the notice from a date that is also specified in the notice (which must be at least seven days after the end of the period allowed for the landlord to remedy the breach).

The landlord may, before the time fixed in the tenant's notice for termination of the tenancy or the tenant gives up possession of the premises (whichever is the later), apply to SACAT for an order:

- (a) declaring that the landlord is not in breach of the residential tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
- (b) reinstating the tenancy.

If SACAT is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy (or would be just and equitable to reinstate the tenancy if the conditions of the order were complied with), the Tribunal may make an order reinstating the tenancy.

5.4.2. Termination by tenant if residential premises for sale

The tenant under a residential tenancy agreement may, by notice of termination given to the landlord, terminate the tenancy if:

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- (a) within 2 months after the start of the agreement, the landlord enters into a contract for the sale of the residential premises; and
- (b) the landlord did not, before the residential tenancy agreement was entered into, advise the tenant as required under section 47A.

A notice of termination under this subsection of the RTA (85A [1]) must, if the landlord has given written notice advising the tenant of the contract for the sale of the residential premises be given to the landlord within 2 months after the day on which the notice was given to the tenant.

5.4.3. Termination by tenant without specifying a ground of termination

The tenant under a residential tenancy agreement for a periodic tenancy may, by notice of termination given to the landlord, terminate the tenancy without specifying a ground of termination. (2) The minimum period of notice under this section is 21 days or a period equivalent to the period of the tenancy agreement (whichever is longer).

5.4.4. Notice to be given at end of fixed term

The tenant under a residential tenancy agreement for a fixed term may, by notice of termination given to the landlord, terminate the tenancy at the end of the fixed term without specifying a ground of termination. The period of notice under this section must be at least 28 days.

5.4.5. Termination where agreement frustrated

A tenant may, by notice of termination given to the landlord, terminate a residential tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the premises or a substantial portion of the premises:

- (a) have been destroyed or rendered uninhabitable; or
- (b) have ceased to be lawfully usable for residential purposes; or
- (c) have been acquired by compulsory process.

A notice given under this subsection (86B[1]) of the RTA may terminate the agreement immediately.

5.5. Termination by SACAT

5.5.1. Termination on application by landlord

SACAT may, on application by a landlord, terminate a residential tenancy and make an order for possession of the premises if satisfied that:

- (a) the tenant has committed a breach of the residential tenancy agreement; and
- (b) the breach is sufficiently serious to justify termination of the tenancy.

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SACAT may, on application by a landlord, terminate a residential tenancy and make an order for possession of the premises if satisfied that:

- (a) the tenant has failed to pay rent in breach of the residential tenancy agreement; and
- (b) on at least 2 occasions in the 12 month period preceding the breach:
 - (i) the tenant was given a notice under section 80 of a breach of the agreement on the ground of a failure to pay rent; and
 - (ii) the notice was not ineffectual within the meaning of section 80(2) of the RTA.

On an application SACAT may make alternative orders providing for the tenant to comply with specified conditions in relation to the payment of rent under the agreement.

SACAT may, on application by a landlord, terminate a residential tenancy and make an order for immediate possession of the premises if the tenant or a person permitted on the premises with the consent of the tenant has, intentionally or recklessly, caused or permitted, or is likely to cause or permit:

- (a) serious damage to the premises; or
- (b) personal injury to:
 - (i) the landlord or the landlord's agent; or
 - (ii) a person in the vicinity of the premises.

Note: A tenancy may be terminated by a notice under section 80 of the RTA if the tenant fails to remedy a breach after being required to do so by the landlord. This alternative procedure may be appropriate if (for example) the breach is not capable of remedy.

5.5.2. Termination based on hardship

If the continuation of a residential tenancy would result in undue hardship to the landlord or the tenant, SACAT may, on application by the landlord or the tenant, terminate the agreement from a date specified in SACAT's order and make an order for possession of the premises as from that day.

SACAT may also make an order compensating a landlord or tenant for loss and inconvenience resulting, or likely to result, from the early termination of the tenancy.

5.5.3. Termination based on domestic abuse

SACAT may, on application by a tenant or a co-tenant, terminate a residential tenancy from a date specified in SACAT's order if satisfied:

- (a) that an intervention order is in force against a person who resides at the residential premises for the protection of:
 - (i) the applicant; or

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- (ii) a domestic associate of the applicant who normally or regularly resides at the residential premises; or
- (b) that a person who resides at the residential premises has committed domestic abuse against:
 - (i) the applicant; or
 - (ii) a domestic associate of the applicant who normally or regularly resides at the residential premises.

SACAT may, on application by a community housing provider registered under the Community Housing Providers National Law, terminate a residential tenancy from a date specified in SACAT's order if satisfied:

- (a) that an intervention order is in force against a tenant for the protection of a person who normally or regularly resides at the residential premises; or
- (b) that a tenant has committed domestic abuse against a person who normally or regularly resides at the residential premises.

This section (5.5.3) provides an overview of subsection 89A (Termination based on domestic violence) of the RTA. When making decision regarding termination based on domestic violence, refer to subsection 89A of the RTA for greater detail on requirements and responsibilities.

5.5.4. SACAT may terminate tenancy if tenant's conduct unacceptable

SACAT may, on application by an interested person, terminate a residential tenancy and make an order for possession of the premises if it is satisfied that the tenant has:

- (a) used the premises, or caused or permitted the premises to be used, for an illegal purpose; or
- (b) caused or permitted a nuisance; or
- (c) caused or permitted an interference with the reasonable peace, comfort or privacy of another person who resides in the immediate vicinity of the premises.

If SACAT terminates a tenancy and makes an order for possession under this section:

- (a) SACAT must specify the day as from which the order will operate, being not more than 28 days after the day on which the orders are made; and
- (b) SACAT may order the landlord:
 - (i) to take such action as is specified in the order for the purpose of taking possession of the premises; and
 - (ii) not to permit the tenant to occupy the premises (whether as a tenant or otherwise) for a specified period or until further order (and any agreement entered into in contravention of such an order is void).

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However:

- (a) the Tribunal must not make an order under this section unless the landlord has been given a reasonable opportunity to be heard in relation to the matter; and
- (b) if the landlord objects to the making of an order under this section, the Tribunal must not make an order unless the Tribunal is satisfied that exceptional circumstances exist justifying the making of the order in any event.

In this section, interested person means:

- (a) the landlord; or
- (b) a person who has been adversely affected by the conduct of the tenant on which the application is based; or
- (c) a strata corporation or community corporation representing the interests of persons who have been adversely affected by the conduct of the tenant on which the application is based; or
- (d) a police officer; or
- (e) an authorised officer within the meaning of the Fair Trading Act 1987. Refer to subsection 90 (4) and (5) of the RTA for more information on applications by an authorised officer.

5.6. Notices of termination

5.6.1. Form of notice of termination

A notice of termination given by a landlord to a tenant must:

- (a) be in writing and in the form prescribed by regulation; and
- (b) be signed by the landlord or the landlord's agent; and
- (c) state the address of the premises subject to the tenancy; and
- (d) state the day on which the tenant is required to give up vacant possession of the premises to the landlord; and
- (e) if the tenancy is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
- (f) include any further information required by regulation.

A notice of termination given by a tenant to a landlord must:

- (a) be in writing and in the form required by regulation; and
- (b) be signed by the tenant or an agent of the tenant; and
- (c) state the address of the premises subject to the tenancy; and
- (d) state the day on which the tenant is to give up vacant possession of the premises to the landlord; and

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- (e) if the tenancy is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
- (f) include any further information required by regulation.

5.6.2. Termination of periodic tenancy

A notice terminating a periodic tenancy under the RTA is not ineffectual because:

- (a) the period of notice is less than would, apart from this Act, have been required at law; or
- (b) the day on which the tenancy is to end is not the last day of a period of the tenancy.

5.6.3. Notice of termination void if no action taken

If:

- (a) a notice of termination is given to a landlord or tenant; and
- (b) the tenant has not given up vacant possession of the residential premises to the landlord within 1 month after the day on which he or she is to do so in accordance with the notice; and
- (c) the landlord has not, within that period, applied to SACAT for an order for possession of the premises, the notice of termination is ineffectual and the residential tenancy will be taken not to have been terminated.

5.7. Informing the Tenant of their Rights and Responsibilities

A2P will advise tenant(s) of their rights and responsibilities when a notice is issued and when legal action is taken at SACAT that may result in their tenancy being terminated. This will include referral to tenancy advice, interpreters and support if their tenancy is threatened or ending.

5.8. Order for possession

If a residential tenancy is terminated by notice of termination under the RTA or, in the case of a tenancy under which the South Australian Housing Trust is landlord, under the residential tenancy agreement, the landlord may apply to the Tribunal for an order for possession of the premises.

Note: The landlord may not make the application if the notice of termination is ineffectual under section 92A (Notice of termination void if no action taken) of the RTA.

If SACAT is satisfied that the tenancy has been terminated, SACAT may make an order for possession of the premises.

The order for possession will take effect on a date specified by SACAT in the order, being a date not more than seven days after the date of the order unless the operation of the order for possession is suspended.

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However, if SACAT, although satisfied that the landlord is entitled to an order for possession of the premises, is satisfied by the tenant that the grant of an order for immediate possession of the premises would cause severe hardship to the tenant, SACAT may:

- (a) suspend the operation of the order for possession for up to 90 days; and
- (b) extend the operation of the residential tenancy agreement until the landlord obtains vacant possession of the premises from the tenant.

In extending the operation of the residential tenancy agreement, SACAT may make modifications to the agreement that it considers appropriate (but the modifications cannot reduce the tenant's financial obligations under the agreement).

If the tenant fails to comply with an order for possession, the landlord is entitled to compensation for any loss caused by that failure. SACAT may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under subsection.

5.9. Abandoned Premises, Property and Personal Documents

SACAT may, on application by A2P:

- (a) declare that a tenant abandoned premises on a day stated in the declaration; and
- (b) make an order for immediate possession of the premises.

Refer to Section 94 and 97 of the RTA, the *A2P Abandoned Premises, Property and Personal Documents Policy* and the [Reclaiming possession of a rental property and how to deal with abandoned property factsheet](#) for more information.

5.10. Repossession of Premises

A person cannot enter premises for the purpose of taking possession of the premises before, or after, the end of a residential tenancy, in accordance with section 95 Repossession of a Premises of the RTA unless:

- (a) the tenant abandons, or voluntarily gives up possession of, the premises; or
- (b) the person is authorised to take possession of the premises by force of a notice to vacate issued in respect of the premises; or
- (c) the person is authorised to take possession of the premises under the order of a court or SACAT.

5.11. Enforcement of orders for possession

If an order for possession of premises is made by SACAT and the person in whose favour the order was made advises SACAT, within 14 days of the day on which the order takes effect or such longer period as SACAT may allow, that the order has not been complied with:

- (a) the order is enforceable by a bailiff (and only by a bailiff unless a police officer must, if requested by a bailiff, assist the bailiff in enforcing an order for possession), and

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(b) the bailiff must enforce the order as soon as is practicable after SACAT is advised that it has not been complied with.

This section provides an overview of rights and responsibilities in relation to bailiffs, refer to section 99 of the RTA for further information if needed.

5.12. Tenant Responsibilities at the End a Tenancy

Tenant(s) are required to leave the property in a clean and tidy condition that is as near as possible to the condition it was in at the beginning of the tenancy, apart from fair wear and tear. 'Fair wear and tear' is defined as deterioration over time as a result of reasonable use and the action of natural elements, even though the property receives reasonable care and maintenance.

Tenant(s) are responsible for locking the property and returning all the keys given to them at the start of the tenancy to A2P.

5.13. Property Inspection Upon Termination

A2P will try to arrange an inspection of the property with the tenant, or a proxy of their choice, close to the time the tenant will be vacating. During this inspection, A2P will complete the original property condition report by comparing the current condition of the property with its condition at the start of the tenancy. If there is any damage to the property beyond fair wear and tear, A2P will advise the tenant of any costs that they may have to pay to repair the damage.

A2P will carry out another inspection after the tenant(s) has left. A2P will tell the tenant(s) when this is happening so that they can attend the inspection if they wish. A2P will document any damage beyond fair wear and tear. The tenant must pay the costs to repair any damage beyond fair wear and tear.

Where a tenant is unable to attend the inspection, A2P will complete the property condition report in the tenant's absence.

5.14. Tenant Accounts Upon the Termination of a Tenancy

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

Where notice is given by the tenant:

- If a tenant vacates without giving sufficient notice, A2P will charge rent for the full notice period (14 days).
- If a tenant abandons the property, A2P will charge rent up to the date that A2P obtains vacant possession of the property.

Where notice is given by A2P:

- If the tenant moves out earlier than the date specified on the Notice of Termination, rent will only be charged up to the date the tenant gives vacant possession.
- If the tenant moves out on or after the date specified on the Notice of Termination, A2P will charge rent up to the date the tenant gives vacant possession.

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- If A2P evicts the tenant, or if the property becomes uninhabitable, A2P will charge rent up to the end of the last day the tenant had possession of the property.

6. Procedure

Staff are to use the A2P [Termination of a Tenancy Checklist](#) when a tenancy agreement is ended.

7. Definitions

Tenant refers to the person who signs the Residential Tenancy Agreement with A2P.

SACAT refers to the South Australian Civil and Administrative Tribunal

Residential Tenancy Agreement refers to an agreement under which a person grants another person a legal right to occupy premises for the purpose of residence. It can be written, verbal or implied.

Fixed Term tenancy refers to a fixed term lease exists where the parties agree on a single, specific length of tenancy - usually for six months or one year, although it can be for any period as long as the period is fixed.

Periodic tenancy refers to a periodic lease that is for a recurring period without a fixed term.

8. Reference Documents and Links

8.1 Directive Documents

- *Residential Tenancies Act, 1995 (SA).*
- South Australian Civil and Administrative Tribunal Act, 2013.

8.2 Supportive Documents

- [Residential tenancies Information brochure](#)
- [Reclaiming possession of a rental property and how to deal with abandoned property factsheet](#)

8.3 Related Documents and Resources

- A2P [Termination of a Tenancy Checklist](#)
- A2P Residential Tenancy Agreement.
- *A2P Appeal Policy*
- *A2P Tenant Engagement Policy*
- *A2P Abandoned Premises, Property and Personal Documents Policy*
- *A2P Risk of Termination Panel Guidelines (to be developed).*

9. Policy Approval

Content Author:	Delegated Authority: CEO
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10. Revision History

Date	Version	Author / Amended By	Comments / Review History
2016	1	Lyndi Gepp	Original Draft of G314 Termination of Tenancy
2019	2	Rebecca Chapman	Review of G314, transfer to policy template, significant changes to content. Development of Checklist.