

 ACCESS 2 PLACE HOUSING	TERMINATION OF A TENANCY POLICY		Policy Number	TM05
			Version	3
			Date	November 2021
			Review Date	November 2023

1. Purpose

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

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 and A2P is unable to provide suitable alternative accommodation).

When terminating a tenancy both A2P and tenant(s) have rights and responsibilities under the Act and the Agreement.

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

3. Scope

This policy applies to all A2P tenants who have signed an Agreement for an A2P owned or leased property, including when the signed Agreement has become a periodic tenancy.

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 an 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 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 Act.

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 Act.

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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; the CEO is not to participate in the panel (see 5.2). Refer to the *A2P Risk of Termination of Tenancy Panel Meeting Minutes* for guidance; all items identified in the template are to be addressed.

5.2. Approval of Evictions

The CEO must approve all tenancy terminations before they are carried out.

5.3. Termination Generally

5.3.1. Termination of residential tenancy – the Act section 79

As per section 79 of the Act 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 Act); or
- SACAT 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 SACAT 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.

5.3.2. Agreement continues if not terminated – the Act section 79(A)

If a fixed term agreement has not been terminated before its end date the Agreement continues in accordance with the Act.

This does not apply to any tenancy agreement if section 4 of the Act applies.

See the Act section 79(A) for further conditions and requirements regarding termination and/or continuation of the Agreement.

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5.4. Termination by the landlord

5.4.1. 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.

5.4.1.1. Written notice of breaches – the Act section 80(1)(a, b)

If the tenant breaches the 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).

5.4.1.2. Failure to pay rent – the Act section 80(2) & (3)

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 Act for entitlements.

5.4.1.3. Application to SACAT by Tenant – the Act section 80

If a tenant receives a termination notice under section 80 of the Act, before giving vacant possession they may apply to SACAT for an order permitting their tenancy to continue.

SACAT may make an order regarding reinstatement of the tenancy and under what conditions, if any.

5.4.2. Termination because possession is required by landlord for certain purposes – the Act section 81

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 Act for more information.

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

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

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5.4.3. Termination by landlord without specifying a ground of termination – the Act section (83) (1) & (2) & (3)

A2P may terminate the tenancy without specifying a reason. In this case the notice period must be at least 90 days. However, a tenancy cannot be terminated under this section of the Act if it is for a fixed term.

See the Act section 83 for further information and other exclusions.

5.4.3.1. Notice to be given at end of fixed term – the Act section 83A

A2P may terminate a fixed term tenancy agreement 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.

5.4.3.2. Termination where agreement frustrated – the Act section 83B

A2P may give notice to terminate an Agreement if 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 subsection (a) or (b) may terminate the agreement immediately. A notice given under subsection (c) must provide at least 60 days' notice.

5.4.4. Limitation of right to terminate – the Act section 84

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

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

5.5. Termination by tenant

5.5.1. Notice of termination by tenant on ground of breach of the agreement – the Act section 85

If the landlord breaches an Agreement, the tenant may give the landlord a written notice, in the form required by regulation. This notice must include details of the breach and specify a period in which to remedy the breach (minimum 7 days). See the Act section 85(1).

Before this expires, or before the tenant vacates the premises (whichever is later), A2P may apply to SACAT for an order regarding reinstatement of the tenancy and under what conditions, if any.

5.5.2. Termination by tenant if residential premises for sale – the Act section 85A

As a Community Housing Provider, A2P does not anticipate selling properties. However, should this situation arise, A2P will be guided by the Act.

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5.5.3. Termination by tenant without specifying a ground of termination – the Act section 86

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

5.5.4. Notice to be given at end of fixed term – the Act section 86A

The tenant under an 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.

5.5.5. Termination where agreement frustrated – the Act section 86B

A tenant may give notice to terminate an Agreement if 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 Act may terminate the Agreement immediately.

5.6. Termination by SACAT

5.6.1. Termination on application by landlord – the Act section 87

A2P may apply to SACAT to terminate a tenancy and make an order for possession of the premises under certain circumstances, which may include matters surrounding a breach of tenancy, or failure to pay rent.

At its discretion, SACAT may make alternative orders for the tenant to comply with specified conditions.

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

5.6.2. Termination based on hardship – the Act section 89

If the continuation of a residential tenancy would result in undue hardship to A2P or the tenant either party may apply to SACAT to terminate the Agreement.

SACAT may also make an order compensating A2P or tenant for loss and inconvenience resulting, or likely to result, from the early termination of the tenancy.

5.6.3. Termination based on domestic abuse – the Act section 89A

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A tenant may apply to SACAT to terminate a tenancy under certain circumstances. Similarly, A2P may apply to SACAT to terminate a tenancy and make an order for possession of the premises under certain circumstances. This may include matters involving intervention orders, domestic abuse, etc. At its discretion, SACAT may terminate a residential tenancy.

See the Act section 89A for greater detail on circumstances, requirements, and responsibilities.

5.6.4. SACAT may terminate tenancy if tenant's conduct unacceptable – the Act section 90

SACAT may, on application by an interested person, terminate a residential tenancy and make an order for possession of the premises under particular circumstances, such as illegal activity.

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

- (a) SACAT must specify the day as from which the order will operate – a maximum of 28 days after the orders are made; and
- (b) SACAT may order the landlord:
 - (i) to prepare for taking possession of the premises; and
 - (ii) not to permit the tenant to occupy the premises in accordance with the order.

SACAT may make an order under this section of the Act only if the landlord has been given a reasonable opportunity to be heard on the matter. If the landlord objects to such an order SACAT must not make an order unless SACAT is satisfied that exceptional circumstances exist to make the order in any event.

See the Act sections 90 (1) & (2) & (2a) & (3) for greater detail and definitions.

5.7. Notices of termination

5.7.1. Form of notice of termination – the Act section 91

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

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- (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
- (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.

5.7.2. Termination of periodic tenancy – the Act section 92

A notice terminating a periodic tenancy under the Act may still be effective even if:

- (a) the period of notice is less than would, apart from the 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.

5.7.3. Notice of termination void if no action taken – the Act section 92A

A notice of termination may, after being given, be ineffectual if:

- (a) the tenant has not given up vacant possession of the premises to A2P within 1 month after the day stipulated in the notice; and
- (b) the landlord has not, within that period, applied to SACAT for an order for possession of the premises.

5.8. 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.

5.9. Order for possession – the Act section 93

If a residential tenancy is terminated in accordance with the required process, A2P may apply to SACAT for an order for possession of the premises. However, an application may not be made if the notice of termination is void, as in section 92A (Notice of termination void if no action taken) of the Act.

If SACAT is satisfied that the tenancy has been terminated, SACAT may make an order for possession of the premises, including the date possession will take effect – a maximum of 7 days after the order.

However, under particular circumstances, SACAT may delay the order for possession &/or termination of the tenancy.

Allowing for section 93 of the Act, A2P may seek compensation for any loss caused if the tenant fails to comply with an order for possession.

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See the Act section 93 for more information, including detail of circumstances for termination.

5.10. Abandoned Premises, Property and Personal Documents – the Act sections 94 & 97

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 Act, 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.

5.11. Repossession of Premises – the Act section 95

A person can enter premises to take possession of the premises before or after the end of a residential tenancy, only in accordance with section 95 Repossession of a Premises of the Act.

See the Act section 95 for more information, including circumstances for entry and possible penalty.

5.12. Enforcement of orders for possession – the Act section 99

If SACAT's order for possession has not been complied with, A2P must advise SACAT of this. This must be done within 14 days of the day on which the order takes effect (or other period as SACAT may allow). Then a bailiff may enforce the order, in accordance with the Act.

See the Act section 99 for more information, including timeframes and bailiff involvement.

5.13. 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 to A2P all keys given to them at the start of the tenancy.

5.14. 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.

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

5.15. 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 (28 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.
- 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.

5.16. Notifying the Board of SACAT attendance and/or evictions

Twice a year, the CEO will provide the Board with an update of SACAT attendance and evictions carried out.

6. Procedure

Staff are to use the A2P [Vacating Tenancy Checklist](#) when an Agreement is ended.

7. Definitions

Tenant refers to the person named as the Tenant in 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

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- [Residential Tenancies Act \(SA\) 1995](#)
- [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 [Vacating Tenancy Checklist](#)
- A2P [Residential Tenancy Agreement](#)
- A2P [Complaints, Appeals & Compliments Management and Resolution Policy](#)
- A2P [Engagement Policy](#)
- A2P [Abandoned Premises, Property and Personal Documents Policy](#)
- A2P Risk of Tenancy Termination Panel Meeting Minutes (Addendum 1)

9. Policy Approval

Content Author:	Delegated Authority: CEO
Date: May 2019	Date: 7 th August 2019
Name: Rebecca Chapman Position: Policy Adviser	Name: Jonathan Lardner Position: CEO

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.
2020	2	Rebecca Chapman	Minor changes – inclusion of sections 5.2 and 5.16 as requested by the Board Policy Review Subcommittee
Nov 2021	3	Stephanie Singleton	Significant changes: reduced and simplified the content by rewording many sections which were direct extracts from the Act. Created Panel Meeting minutes template to guide process.

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ADDENDUM 1
A2P Risk of Tenancy Termination Panel Meeting

Date panel convened:

Tenant Name (+ additional household members if applicable):

Property address:

Panel members:

Why is the tenancy at risk of termination?

Discussion of issues:

Mitigating circumstances (e.g. support provider offering to work with the tenant to address the issues):

Documentation to be listed & copies attached (e.g. a letter from a support provider; payment plan to pay off arrears):

Vote result (if Panel does not reach consensus, note the voting for/against termination, including who voted for which option):

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Panel's recommendation – 2 or more panel members' agreement:

Action proposed (e.g. work with tenant, guardian & supports to improve situation a; submit application to SACAT for termination)

Date submitted to CEO:

Panel minutes & documents submitted to CEO ASAP for final decision (CEO may approve Panel's decision or not; whatever the CEO's, decision a clear course of action must be identified and detailed).

CEO decision:

CEO signed (or approved by reply email):

Action required following CEO decision (include who will do what & timeframes):

Save all documentation, including copy of CEO's email, to tenant's file & link to Chintaro notes.