

Tenancy and housing after a disaster

Your questions answered



Tenancy and housing after a disaster

Disaster Response Legal Service NSW

If you've been affected by a bushfire, storm or flood, we can help you with everyday legal problems including housing and tenancy, insurance claims and disputes, financial hardship, disaster grants, workplace rights and domestic and family violence.

Call **1800 801 529** — 9am to 5pm Monday to Friday

www.disasterhelp.legalaid.nsw.gov.au

Tenants' Union of NSW

We work to promote the interests of Aboriginal tenants; boarders, lodgers and other marginal tenants; private rental tenants; public and community housing tenants; and land lease community residents.

www.tenants.org.au

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service\(NRS\)](#). Ask for LawAccess NSW on **1300 888 529**.

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1. Introduction



Is this book for me?

This book is for you if you have been impacted by a disaster and

- you're a tenant in a private rental property in NSW, or
- you're a homeowner who lives permanently in a residential park or village, such as a caravan park.

The information in this book will help you understand what your options are and make a clear decision about the direction of your recovery. See the tables below for a summary of what's in this book.

Tenants

Should I stay or should I go?

If you want to stay...	If you want to go...
<ul style="list-style-type: none">● Your landlord isn't required to provide you with emergency accommodation.● You can ask your landlord to repair the property. You should consider safety and health advice from the SES and council before deciding to live in the property while you wait for it to be repaired.● If your property is uninhabitable or very damaged, you'll be entitled to a partial or full rent abatement (stop in rent) or a rent reduction (pay less rent).● You should continue to pay your rent while you're trying to negotiate a rent reduction/abatement. Keep your receipts.● If your landlord refuses to give you a rent reduction/abatement and/or doesn't do repairs, then you can make an application to NCAT.	<ul style="list-style-type: none">● If your property is partly or wholly uninhabitable, you can terminate your tenancy without paying a penalty fee.<ul style="list-style-type: none">› You do this by issuing an uninhabitability termination notice.● If your property isn't uninhabitable, how you end your tenancy will depend on whether it's a fixed term or a periodic agreement.<ul style="list-style-type: none">› Fixed term -<ul style="list-style-type: none">○ Termination by written consent (no break lease fee)○ Termination with payment of a break lease fee.○ Termination for hardship – apply to NCAT. NCAT will decide if you need to pay anything.› Periodic agreement -<ul style="list-style-type: none">○ You can issue a termination notice with at least 21 days notice.

Your landlord may want you to leave

If your landlord believes that your property is partly or wholly uninhabitable, they may give you a termination notice. The notice may tell you that you need to move out immediately.

You don't need to move out because you've received a termination notice. Your landlord can't evict you without going to the Tribunal known as the NSW Civil and Administrative Tribunal (NCAT).

Getting repairs done to the property

If your landlord refuses or fails to do repairs to the property, you can make an application to NCAT to get an order.

Homeowners

(caravan or dwelling in a residential park or village, also known as a land lease community)

Should I stay or should I go?

If you want to stay...	If you want to go...
<ul style="list-style-type: none"> ● The community operator doesn't need to provide you with emergency accommodation. ● The community operator is responsible for repairing and cleaning up common areas. ● The park owner is responsible for restoring services to your site, such as utilities and road access. ● You're responsible for repairing your dwelling. You're also responsible for repairing and cleaning your site. ● If your site is uninhabitable, you're not required to pay site fees and you may request a site fee abatement from the community operator. You're not entitled to a site fee abatement if it's just your dwelling that is damaged. 	<ul style="list-style-type: none"> ● You can terminate your site agreement by giving a 30-day termination notice to the community operator. ● If your dwelling is uninhabitable, you're responsible for removing it from the site. ● If your dwelling isn't uninhabitable but you want to leave, you're entitled to sell your dwelling while it's located on the site.

Disputes about repairs and site fees

If the community operator doesn't:

- repair or clean up the common areas of the park, or
- agree to a site fee abatement or reduction

you can make an application to NCAT to get orders about this.



2. Tenants



Am I a tenant?

Following a disaster, it's important to know whether you're a tenant so that you know what your rights and responsibilities are.

In some situations, you can be a tenant even if you don't have a written agreement from the person you're renting from.

Tenants

The law says that a residential tenancy agreement can be written or oral, or a combination of both.

This means that you don't always need to have a formal written agreement to be a tenant.

Generally, you're a tenant if you have an agreement with the owner of the property (either oral or written) to live there in return for value (rent or service).

However, there are some types of premises where the law does not recognise residential tenancies, some examples include hotels, motels, backpackers' hostels, nursing homes, leases on Crown lands.

Tenant and landlord rights and obligations come from the *Residential Tenancies Act 2010* (NSW).

Sub-tenants

You may be a sub-tenant if the person that you rent from is a head-tenant who has their own agreement with the person who owns the property (the landlord).

If the head-tenant doesn't live with you

You can have either a written or oral agreement with the head-tenant and you'll be covered by the *Residential Tenancies Act 2010*. This is sometimes referred to as a 'sublease'.

If you live with the head-tenant

You'll have the rights and protections of the *Residential Tenancies Act 2010* but only if you have a written tenancy agreement with the head-tenant. This is sometimes referred to as a 'sublease'.

If you don't have a written tenancy agreement you are not covered by the *Residential Tenancies Act 2010* and your legal status may be more complicated. If this sounds like your situation, you should get legal advice.

Should I stay or should I go?

The answer to this question may depend on whether your property is “uninhabitable.” “Uninhabitable” means the property is no longer fit to live in. Things that may lead to a property being uninhabitable include:

- the property isn’t structurally sound
- the plumbing and/or electricity aren’t working
- the water isn’t safe to drink
- water is entering through the windows or doors, or
- there isn’t proper ventilation in the property.

TIP

The time following a disaster can be extremely stressful and traumatic. Before deciding whether to terminate your tenancy, it’s a good idea to stop and pause. Consider all your options carefully before deciding what to do.

My property is uninhabitable after a disaster, what are my options?

Make sure you're safe

Are you and your family safe? Stay away from danger.

Check in with yourself and your family about how you're all feeling. Talk to your doctor or call Lifeline on **13 11 14** if you need support.

Terminating your tenancy agreement

If your property is badly damaged and you can no longer live in it or it's unsafe to return, you can terminate your tenancy agreement because it's uninhabitable.

To do this, you must send your landlord a written termination notice which states the date when you will give them vacant possession.

There is no specific period of notice that you need to give, and termination can be immediate. Vacant possession usually means that you have removed all your belongings from the property and handed back the keys to your landlord or real estate agent. If you are unable to remove your belongings because it is unsafe to do so, you should get legal advice about your options.

It's a good idea to choose a date for your termination notice which gives you enough time to clear out the property and return the keys.

If both you and your landlord agree that the property is destroyed or has become uninhabitable, you should ask your landlord to put this in writing.

Where there is a dispute about whether the property is uninhabitable

If your landlord doesn't agree that the property is destroyed or has become uninhabitable, you may have to make an application to the NSW Civil and Administrative Tribunal (NCAT) to end your tenancy. If you don't, your landlord may charge you a break fee and/or you may lose some of your bond. You should get legal advice as soon as possible if you're in this situation.

Giving a termination notice when property has become wholly or partly uninhabitable

For your termination notice to be valid you must make sure it:

- is in writing and signed by you
- lists the address of the property
- specifies the termination date (when you'll move out), and
- gives the reason why you want to end your tenancy.

You must deliver the notice in one of the following ways:

- in person
- by dropping it off into your landlord or real estate agent's letter box
- by mail (you must add seven working days to ensure the proper notice is given), or
- by email if your landlord or agent has agreed in writing to accept documents this way (this will usually be set out in your lease).

There is a sample termination notice for uninhabitability at the end of this book.

Continuing the tenancy

Sometimes there are few options for alternative housing in a disaster impacted area. This may mean that you choose to continue your tenancy and ask your landlord to repair the damage.

If your landlord thinks the property is uninhabitable, your landlord may issue you with a termination notice. For more information about this see page 15 **My property is uninhabitable, and my landlord wants me to leave.**

TIP

“Uninhabitable” means the property is no longer fit to live in. This may be because the property isn't structurally sound, the utilities aren't working, or parts of the property are damaged. The whole property doesn't need to be uninhabitable. You can terminate your tenancy agreement even if only part of the property is uninhabitable.

If your landlord doesn't terminate your tenancy, they should repair the property within a reasonable timeframe. For more information on this see page 16 **Getting repairs done after a disaster.**

You should consider safety and health advice from the SES and council before deciding to live in the property while you wait for it to be repaired.

Emergency accommodation

Your landlord isn't required to provide you with temporary or emergency accommodation if your property becomes uninhabitable because of a disaster.

To find emergency accommodation call Service NSW on **13 77 88**.

Rent abatement

If your property is damaged by a disaster, you may be entitled to a partial or full abatement of your rent.

A rent abatement is a reduction in your rent because you can't use the whole or part of your property because of the disaster damage.

You should write to your landlord requesting an abatement. The amount of abatement you ask for should be based on the percentage of the property you can't use.

For example, if you have a two-story property and you can't use the bottom level because it flooded, you might ask for a 50% rent abatement.

If you come to an agreement with your landlord about a rent abatement, you should get the agreement in writing.

There is a sample request for rent abatement at the end of this book.

Applying to NCAT for a rent abatement

If you and your landlord can't agree on a rent abatement, you can apply to NCAT for orders:

- that your rent be abated by a specified amount from the date the property became uninhabitable, and/or
- that your landlord refund you any rent you have paid above the specified amount since the date the property became uninhabitable.

Time limit

You must make this application to NCAT within 28 days from when your property became uninhabitable.

If you're unable to make an application within the 28-day time limit, you can apply to NCAT for an extension of time. You should get legal advice as soon as possible if you would like to do this.

My property isn't uninhabitable, but I want to leave

Even if your property is still habitable, you may still want to end your tenancy. There are many ways that you can end your tenancy agreement.

Remember, “uninhabitable” means the property is no longer fit to live in. This may be because the property isn't structurally sound, the utilities aren't working, or parts of the property are damaged. If your property is uninhabitable, see page 15 **My property is uninhabitable, and my landlord wants me to leave.**

What kind of agreement do I have?

When your property is fit to live in (not uninhabitable), whether you can terminate your tenancy agreement and how to do it depends on what kind of tenancy agreement you have. There are two kinds of tenancy agreements:

1. Fixed term – this is where you signed a tenancy agreement for a set period, and you're still within that period. For example, six months.
2. Periodic tenancy – When the fixed term of your tenancy agreement ends and you don't sign a new fixed term agreement, your tenancy will become a 'periodic tenancy' with no specified end date. Sometimes this is known as a 'rolling lease.'

Ending a fixed term agreement at the end of the fixed term

If you're nearing the end of your fixed term agreement, you can give a 14-day termination notice. The termination date must be on or after the last day of the fixed term.

You can find a sample termination notice for end of fixed term at the end of this book.

Ending a fixed term agreement early

Breaking the agreement

- By consent

You should write to your landlord and tell them you want to leave. You should ask for their consent to end the agreement early and without penalty.

- By paying a break fee or compensation

If your landlord doesn't consent, you can still end the agreement by moving out and handing back the keys. You should stop paying rent as soon as you move out. If you do this, you'll be required to pay your landlord a break lease fee.

The fee amount will depend on when you started your tenancy agreement.

If your agreement started after **23 March 2020** and it was for a fixed term of three years or less, the amount of the fee will depend on how far into the fixed term period you are.

- If less than 25% of the fixed term has expired = four weeks rent.
- If 25% or more but less than 50% has expired = three weeks rent.
- If 50% or more but less than 75% has expired = two weeks rent.
- If 75% has expired = one weeks rent.

If your agreement started before 23 March 2020, you'll have to pay a break fee if it's included in your lease. It'll be limited to:

- six weeks rent, if less than half of the fixed term has expired, or
- four weeks rent if you're in the second half.

If no break fee is included in your agreement, your landlord could apply to the NSW Civil and Administrative Tribunal (NCAT) for compensation for whatever their reasonable losses are. For example, re-letting fees, agent fees, advertising fees and, depending on the circumstances possibly rent for the balance of the fixed term or until a new tenant can be found.

Termination for hardship

You can terminate your fixed term tenancy if you can show that you will experience undue hardship if the tenancy continues.

To do this, you must make an application directly to NCAT.

NCAT will consider whether your case has special circumstances such as that you'll experience undue hardship if it did not make a termination order.

NCAT may order that you compensate your landlord for their loss unless you can show very good reasons why you should not have to.

You don't need to give your landlord a termination notice before you apply to NCAT.

Note that you will still be liable for rent up until you give vacant possession.

Examples of undue hardship might include:

- you have a disability and are no longer able to access the services you need in your disaster affected area so need to move to a different town, or
- you lose your job because of the disaster and can't afford the rent anymore.

Ending a periodic agreement

To terminate a periodic tenancy agreement, you simply need to give your landlord a 21-day termination notice and then move out at the end of that notice period.

There is a sample termination notice for ending a periodic agreement at the end of this book.

Requirements for a termination notice

For your termination notice to be valid you must make sure it:

- is in writing and signed by you
- lists the address of the property
- gives the correct amount of notice and specifies the date which you'll move out, and
- gives the reason why you want to end your tenancy.

You must deliver the notice in one of the following ways:

- in person
- by dropping it off into your landlord or real estate agent's letter box
- by mail (you must add seven working days to ensure the proper notice is given), or
- by email if your landlord or agent has agreed to accept documents this way (this will usually be set out in your lease).

My property is uninhabitable, and my landlord wants me to leave

Your landlord may be able to end your tenancy if the whole property, or even just part of the property becomes uninhabitable from a disaster.

Your landlord must give you a termination notice with a date that you need to move out, empty the property and hand back the keys. This date can be before the end of your lease.

There is no specific notice period, and the termination date can be on the same date that the termination notice is given.

You don't have to move out by the date in the notice.

If you don't believe that the property is uninhabitable, or you have nowhere else to go, you don't have to move out by the date in the termination notice.

You could try to negotiate with your landlord about a timeframe to move out (make sure to get this in writing) or you could wait to see if your landlord makes an application to the NSW Civil and Administrative Tribunal (NCAT).

You can't be lawfully evicted without an order from NCAT.

Your landlord must apply to NCAT to evict you

If you don't move out by the date specified in the notice, your landlord can apply to NCAT for an order terminating your tenancy.

Your landlord will need to provide evidence in NCAT to show that part or all of the property is uninhabitable.

If you don't agree that the property is uninhabitable, you should get evidence by taking photos and videos of the property, or if possible, get a report from a relevant tradesperson or engineer.

If NCAT decides to make a termination order, you can ask for time to move out of the property. NCAT will look at any hardship you'll experience from being evicted when deciding how long to give you to move out.

You'll need to provide evidence of your hardship in NCAT. For example:

- a letter from your doctor about your medical condition/s which make it hard to move in a short timeframe, or
- evidence about your lack of housing options. you could include documentary evidence of rental applications which have not been successful.

Getting repairs done after a disaster

Your landlord needs to maintain the premises in a reasonable state of repair.

You should tell your landlord in writing if repairs need to be done.

When it's safe to do so, you should go through the property and make a record of everything that needs to be repaired. It's a good idea to take photos and videos as you do this.

You should write to your landlord asking them to organise repairs and providing them with a list of what needs to be repaired.

In general, your landlord must do the repairs within a reasonable timeframe. What is reasonable will depend on the circumstances. For example, after a disaster there may be a shortage of tradespeople which may cause delays in getting repairs done or the SES or council may have said it's not yet safe for anyone to go inside the premises.

There is a sample letter requesting repairs at the end of this book.

Urgent repairs

If your landlord doesn't respond to you or won't do an urgent repair quickly, you can organise and pay for the repair yourself if it doesn't cost more than \$1,000. Keep any receipts.

You should then write to your landlord and request they pay you back.

Urgent repairs include:

- a burst water service
- an appliance, fitting or fixture that uses water or is used to supply water that is broken or not working properly, so that a lot of water is being wasted
- a blocked or broken toilet
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to your property
- a failure or breakdown of any essential service in the property for hot water, cooking, heating, cooling or laundering, or
- any fault or damage that causes the property to be unsafe or unsecure.

You can find a sample letter requesting reimbursement for urgent repairs at the end of this book.

If your landlord doesn't pay you back

If your landlord doesn't pay you back within 14 days, you can make an application to the NSW Civil and Administrative Tribunal (NCAT) seeking an order for the cost of the urgent repairs to be paid back to you. The time limit to apply to NCAT is three months from the landlord's failure to reimburse you for the urgent repairs.

TIP

It can be difficult to get orders to pay you back for urgent repairs if your landlord does not agree to reimburse you. Before you spend your own money, it's a good idea to get advice first.

If your landlord doesn't do the repairs

If your landlord doesn't do the repairs in a reasonable timeframe, they will be in breach of your tenancy agreement, and you can make an application to NCAT for an order that the repairs be done within a specified time frame.

Rent reduction vs rent abatement

You can also ask NCAT to make an order reducing your rent. Sometimes this is called a rent reduction or a rent abatement.

A rent reduction is available where the property isn't uninhabitable but there are still repairs that need to be done. This occurs where there has been a withdrawal or a service or facility and your landlord is responsible for the withdrawal. You would be entitled to a rent reduction from the time damage occurred until repairs are completed.

A rent abatement is available where the property is partially or completely uninhabitable or unusable and it's not your landlord's fault, for example, in a disaster. If you decide to request repairs instead of terminating the tenancy, you're entitled to a rent abatement from when the disaster damage occurred until it's repaired.

The amount of reduction or abatement you ask for should be based on the percentage of the property which you're unable to use.

For example, if you have a two-story property and you're unable to use the bottom level because it flooded you might ask for a 50% rent abatement.

You can find a sample request for rent reduction and abatement at the end of this book.

Compensation

You also might be able to claim compensation for your loss.

You can claim for money that you needed to spend because your landlord didn't do the repairs in a reasonable timeframe. This is called economic loss. Examples could include:

- money you spent on take away food because you were unable to use the kitchen to cook due to electrical damage caused by a bushfire and your landlord has unreasonably delayed repairs to the kitchen, or
- the depreciated value of furniture or personal items which got damaged because of your landlord's failure to fix a problem caused by a flood. For example, where a flood caused damage to a window and your landlord failed to fix the window which later led to more water entering your property and damaging your belongings.

You may also be able to claim non-economic loss for the inconvenience or distress caused from your landlord not doing the repairs. This can be complicated so you should get legal advice about making this type of claim.

Access by your landlord in an emergency

Your landlord, real estate agent or anyone authorised by your landlord is allowed to enter your property without your consent and without giving you notice for the following reasons:

- in an emergency – such as during a disaster to take steps to prevent damage to the property
- to carry out urgent repairs
- if your landlord believes there is reasonable cause for serious concern about your health or safety and they haven't been able to contact you to get consent
- if your landlord forms the reasonable belief that the property is abandoned, or
- with an order from NCAT.

If you can't return to the property for a period and you don't want to end your agreement, it's important that you tell your landlord in writing that you want your tenancy to continue so that they don't think you have abandoned it.

Access to conduct repairs

Your landlord or real estate agent is allowed to enter your property without your consent for the purpose of carrying out or assessing the need for repairs or maintenance so long as they give you two days' notice each time, except in the emergency situations described above.



3. Homeowners



Should I stay, or should I go? What are my options after a disaster?

Read this chapter if you live permanently in a residential park or village and own your home or caravan.

Make sure you're safe

Are you and your family safe? Stay away from danger.

Check in with yourself and your family about how you're all feeling. Talk to your doctor or call Lifeline on 13 11 14 if you need support.

Can the community operator terminate my site agreement because it's uninhabitable?

Your community operator can't terminate your site agreement simply because your individual site has become uninhabitable.

However, if the community operator is required by law to do repair work to the site or community, and they can't do that work while you're living there, they may give you a termination notice.

They must give you 90 days to move out.

They also must give you the order or notice which shows where the legal obligation to do the work is coming from.

For example, if the NSW Civil and Administrative Tribunal (NCAT) orders that the community operator needs to repair your site, and the operator says they can't do the repairs with you living there, they may give you a termination notice an NCAT order attached.

However, you don't need to move out just because you received a notice.

The community operator will not be able to evict you without an order from NCAT and NCAT must consider whether the community operator really needs the site to be empty for them to do the repair work.

Termination notice

A termination notice must be signed by the community operator or a person acting on behalf of the community operator, such as a park manager and must include:

- the residential site
- the day on which you're required to remove your dwelling from the site and move out, and
- the reason they are giving you the termination notice.

If you're given a termination notice by your community operator, you should get legal advice.

What if I want to terminate my site agreement?

If your dwelling is destroyed or you decide that you want to take it somewhere else to live, you'll need to terminate your site agreement.

You don't need to give the community operator a reason why you want to terminate your site agreement. But you need to give the community operator a termination notice providing at least 30 days' notice before you move out.

You must remove your dwelling from the site on or before the date stated in your termination notice. If you don't do this, your site agreement will continue and you'll have to still pay site fees until it's terminated in some other way.

You can find a sample termination notice at the end of this book.

What if I want to sell my dwelling?

You can sell your dwelling while it's located on the site.

To do this, you need to give the community operator written notice of your intention to sell your dwelling before you offer it for sale.

The community operator must not cause any interference with the sale of your dwelling.

If the prospective buyer wants to continue to live in the park, they will also need a site agreement.

TIP

The time following a disaster can be extremely stressful and traumatic. Before deciding whether to terminate your site agreement or sell your dwelling, it's a good idea to stop and pause. Consider all your options carefully before deciding what to do.

Assignment of site agreement

You can write to your community operator and request to assign, or transfer, your current site agreement to the prospective buyer.

You'll need an agreement in writing from the community operator to do this.

The prospective buyer will then be able to take over your site agreement on the same terms that you had, including the amount of site fees.

New site agreement for the prospective buyer of your dwelling

Another option is for the prospective buyer to request that the community operator enter into a new site agreement with them.

The community operator can only refuse to enter into a new site agreement if:

- the prospective buyer is listed on a residential tenancy database, or
- has been evicted from another community within the last five years for breach of a site agreement, or

- the community operator and the prospective buyer can't agree on the terms of the proposed agreement.

The community operator may decide to offer a site agreement on different terms to what you previously had and may decide to increase the site fees if the increased site fees are fair market value

Site fee abatement for uninhabitability

If the residential site becomes wholly uninhabitable because of a disaster, you can get a full site fee abatement. This means you shouldn't have to pay any site fees until either:

- the site becomes wholly habitable again, or
- your site agreement is terminated by you or the community operator.

This doesn't apply if it's just your dwelling that is uninhabitable.

Examples of uninhabitability include:

- sewerage and grey water damage, and
- a sink hole or earth movement which make it unsafe to enter your site or live in your dwelling.

Before you stop paying your site fees, you should write to your community operator requesting the abatement. If your community operator does not agree to the abatement, you will need to seek an order from NCAT.

This is because if the community operator disagrees that the park or your site is uninhabitable and you stop paying site fees, they may take action against you at NCAT because you didn't pay. If your community operator doesn't agree to a site fee abatement you can apply to NCAT for an order.

Time limit

The time limit to make an application to NCAT for a site fee abatement due to uninhabitability is within 28 days of the site becoming uninhabitable.

However, if you can't make the application in this time, you may be able to ask for an extension of time. You should get legal advice as soon as possible.

Repairing damage and cleaning up following a disaster

Community operator responsibilities

The community operator is generally responsible for fixing damage to the park common areas including the removal of rubbish and debris.

Following a disaster, they must make sure this work is done as soon as reasonably practicable and in a way that minimises disruptions to residents. They must also make sure that the work is done to a reasonable standard.

The community operator must make sure that you have access to your site and reasonable access to the common areas.

If there has been a disruption to the supply of utilities to your site, for example electricity or gas supply, they must re-connect the supply as soon as they can.

While community operators must ensure that a residential site is in reasonable condition at the commencement of a site agreement, community operators aren't responsible for fixing damage to your dwelling or the site itself.

What if my community operator isn't fulfilling their responsibilities?

If your community operator doesn't take steps to fulfill their responsibilities, you can apply to NCAT for an order that they do so.

Before you make an application to NCAT it's a good idea to write to the community operator requesting that the repairs or work be done to the community's common areas by a certain date. Your Residents Committee may be able to do this for you because it's likely that you're not the only person affected.

Site fee reduction for failure to repair common areas

If your community operator refuses or doesn't repair damage to common areas and facilities, you can ask for a reduction in your site fees.

If the community operator refuses, you can make an application to NCAT for an order for a site fee reduction. You must make this application while your site agreement is still current or 'on foot'.

You can find a sample letter requesting repairs and site fee reduction at the end of this book.

Your responsibilities

As a homeowner, you're responsible for maintaining your dwelling on the site in a reasonable state of cleanliness and repair.

Generally, you're also responsible for repairing any damage to the site that your dwelling sits on.

After a disaster, this means that you're responsible for removing rubbish and debris from your site and for fixing any damage caused by the disaster to your dwelling. If there is significant damage to the site caused by the disaster, such as sink holes or earth movement, you should get advice about whose responsibility it is to repair this.

If the repairs to your dwelling require you to make alterations to the exterior of your dwelling (other than painting or minor repairs) or to add a fixture, then you must ask the community operator for written consent. The community operator can't unreasonably refuse consent.

If your dwelling is uninhabitable and can't be repaired, you're responsible for removing it from the park. If you decide to move out of the park entirely, you may need to terminate your site agreement. See page 22 for more information about this.

Termination for failure to repair disaster damage to your dwelling

If you don't repair disaster damage to your dwelling, the community operator could give you a termination notice for breach of your site agreement giving you 90 days to move out.

You don't have to move out on the date on the termination notice. Your community operator can't evict you without an order from NCAT.

After the 90 days has expired, the community operator must make an application to NCAT if they still want to evict you.

NCAT will decide whether to terminate your site agreement and must consider your personal circumstances which can include:

- what caused the damage (i.e. a disaster)
- whether you're taking steps to repair the damage, and
- the availability of materials and tradespeople in your area to help with repairs.

If you receive a termination notice, you should get legal advice immediately.



4. Sample letters



Tenants

a. Request for reimbursement for urgent repairs

[Your name]

[Address]

[email]

[Date]

[Landlord or real estate agents name]

[Address]

Dear Sir or Madam,

Request for reimbursement for urgent repairs

Address of property: [Address]

On [DATE] my property was impacted by a disaster [explain what happened i.e. storm, flood, bushfire].

As a result, the property has sustained the following damage which needed to be fixed urgently:

- E.g. A burst water service
- E.g. a dangerous electrical fault
- E.g. a gas leak
- ...

I tried to call you on [DATE] at [TIME] but was unable to reach you so I organised for these items to be repaired myself at a cost of \$[insert amount]. Please find enclosed a copy of the receipt from the tradesperson.

Section 64 of the *Residential Tenancies Act 2010* states that a landlord must reimburse a tenant for the reasonable costs of making urgent repairs to the residential premises.

As such I request to be reimbursed the above amount by [DATE] (*14 days from date of letter*)

Kind regards,

Signature
.....

b. Request for a rent abatement – property uninhabitable

[Your name]

[Address]

[email]

[Date]

[Landlord or real estate agents name]

[Address]

Dear Sir or Madam,

Request for a rent abatement – property uninhabitable**Address of property: [Address]**

On [DATE] my property was impacted by a disaster [explain what happened i.e. storm, flood, bushfire].

As a result, my property is currently partially/completely uninhabitable OR destroyed [choose which applies].

Section 43(2) of the *Residential Tenancies Act 2010* provides that the rent payable under a residential tenancy agreement abates if the residential premises are destroyed or become wholly or partly uninhabitable because of a disaster.

As such, I request a partial/full rent abatement from [DATE OF DISASTER].

Kind regards,

Signature

.....

c. Termination notice – end of fixed term

[Your name]

[Address]

[Date]

[Landlord or real estate agents name]

[Address]

Dear Sir or Madam,

Termination notice – end of fixed term

Address of property: [Address]

I write to provide notice that I will terminate my residential tenancy agreement in accordance with section 96 of the *Residential Tenancies Act 2010* on the basis that the fixed term is coming to an end on [date].

I am required to give you 14 days' notice. As such I will be moving out of the property on [date].

Kind regards,

Signature

d. Termination notice – periodic agreement

[Your name]

[Address]

[Date]

[Landlord or real estate agents name]

[Address]

Dear Sir or Madam,

Termination notice – periodic agreement

Address of property: [Address]

I write to provide notice that I would like to terminate my periodic residential tenancy agreement in accordance with section 97 of the *Residential Tenancies Act 2010*.

I am required to give you 21 days' notice. As such I will be moving out of the property on [date].

Kind regards,

Signature

e. Termination notice – property uninhabitable

[Your name]

[Address]

[Date]

[Landlord or real estate agents name]

[Address]

Dear Sir or Madam,

Termination notice – property uninhabitable**Address of property: [Address]**

I write to provide notice that I would like to terminate my residential tenancy agreement on [DATE] in accordance with section 109 of the *Residential Tenancies Act 2010* on the basis that the property is partially/wholly uninhabitable.

Kind regards,

Signature
.....

Homeowners

f. Termination notice

[Your name]

[Address]

[Date]

[Park or village operators/managers name]

[Address]

Dear Sir or Madam,

I write to provide notice that I would like to terminate my site agreement under section 117 of the *Residential (Land Lease) Communities Act 2013*.

I am required to give you 30 days' notice. As such I will be removing my dwelling/caravan from the site on [DATE]

Kind regards

Signature

g. Notice of intention to offer home for sale

[Your name]

[Address]

[Date]

[Park or village operators/managers name]

[Address]

Dear Sir or Madam,

I write to provide you notice, in accordance with section 105 of the *Residential (Land Lease) Communities Act 2013* that I intend to offer my home for sale.

Kind regards,

Signature

5. Where to get help

If you need more information or advice about your tenancy or residential (caravan) park agreement after a disaster, you can contact the following organisations:

Disaster Response Legal Service NSW

If you've been affected by a bushfire, storm or flood we can help you with everyday legal problems including housing and tenancy, insurance claims and disputes, financial hardship, disaster grants, workplace rights and domestic and family violence.

Call **1800 801 529** – 9am to 5pm Monday to Friday or visit www.disasterhelp.legalaid.nsw.gov.au.

Tenants Advice and Advocacy Service

To find your nearest Tenants Advice and Advocacy Service, visit www.tenants.org.au or call **(02) 8117 3700**.

Tenants' Union of NSW

We work to promote the interests of Aboriginal tenants; boarders, lodgers and other marginal tenants; private rental tenants; public and community housing tenants; and land lease community residents..

Call the Tenants' Advice Line on **1800 251 101**. Further resources include:

- Tenants' Union resources on disasters: tenants.org.au/resources/disasters
- Tenants' Union Disaster Damage Factsheet for renters: tenants.org.au/factsheet-22-disaster-damage
- Tenants' Union Tips for Renting after a Disaster: tenants.org.au/resource/tips-after-disaster
- Tenants' Union Natural Disasters Factsheet for land lease communities: tenants.org.au/thenoticeboard/factsheet/natural-disasters

Recovery centres and recovery assistance points

After a disaster, the NSW Reconstruction Authority often set up recovery centres in disaster affected areas. To find a recovery centre or in-person support, visit www.service.nsw.gov.au/floods/recovery-centres

Emergency accommodation

If your home has been affected by a disaster, you can access temporary emergency accommodation support by visiting a recovery centre or by calling Service NSW on **13 77 88**.

If you are homeless or at risk of becoming homeless, you can also contact Link2Home on **1800 152 152**. The telephone service is open 24 hours a day, 7 days a week.

 **1800 801 529**

www.disasterhelp.legalaid.nsw.gov.au

