



## LGBTIQ Domestic & Family Violence and Tenancy

*This fact sheet is for lesbian, gay, bisexual, trans\*, intersex and queer (LGBTIQ) people who are experiencing or have experienced domestic or family violence. It provides information on what to do if you have been renting premises with a perpetrator of domestic or family violence.*

You may be looking to:

- Stay at the rented premises and have the perpetrator leave; or
- Leave the rented premises.

### WHAT IS MY TENANCY STATUS?

The options that are open to you will be affected by your tenancy status. You may be a:

- **Co-tenant:** Your name and the names of other tenant/s are on the residential tenancy agreement for the premises.
- **Head-tenant:** Your name is on the residential tenancy agreement for the premises, and you sub-let part of the premises to another person (a sub-tenant or boarder/lodger). You are in the position of their landlord.
- **Sub-tenant:** You live with a tenant (their name is on the residential tenancy agreement) who has sub-let part of the premises to you under a separate written tenancy agreement. That person is a head-tenant and in the position of your landlord.
- **Boarder/lodger:** You live with your landlord, and they keep control over the whole premises (including the part you rent). Your landlord may be the owner or a head-tenant.

### WHAT TYPE OF TENANCY AGREEMENT DO I HAVE?

Your options will also be affected by the type of agreement you have. You may have one of the following:

- **Fixed-term tenancy agreement** for a specified period.
- **Periodic tenancy agreement** where no period is specified, or the fixed term has expired.
- **Boarding/lodging agreement.**

### APPREHENDED DOMESTIC VIOLENCE ORDERS (ADVO)

Your ability to stay at the premises without the perpetrator, or leave the premises without needing to compensate your landlord, will be affected by:

- Whether or not you have an ADVO; and

- Whether or not your ADVO contains an exclusion order.

An ADVO is a court order that prohibits the perpetrator from doing certain things so as to ensure your safety and protection. If the conditions of an ADVO are broken, the perpetrator can be arrested and charged with a criminal offence. You may initially be granted a Provisional ADVO and/or an Interim ADVO before obtaining a Final ADVO. Provisional and Interim ADVOs are both temporary but enforceable.

When an application for an ADVO is made by the police on your behalf (or you personally), an exclusion order is one of the conditions that may be made. An exclusion order allows you to remain at home and excludes the perpetrator from the home, even if they would otherwise have a right to be there.

#### Can I stay living in my home?

If you want to remain living in your home, you may be able to have the perpetrator removed. If you have an Interim or Provisional ADVO with an exclusion order, the perpetrator will be excluded from your home throughout the duration of the ADVO.

If an exclusion order is included in the Final ADVO and the perpetrator is named as a **tenant** on the residential tenancy agreement, their tenancy will be terminated. Generally, your tenancy (or other agreement if you are a boarder/lodger) will continue.

If you have a final ADVO stopping the perpetrator of violence from coming to the rental property, you can stay living in the property, but you will be responsible for paying the rent if you are the only remaining tenant in the property.

Alternatively, if you and the perpetrator of violence are **both** on the lease, you can make an application to the NSW Civil and Administrative Tribunal (NCAT) to ask to end the perpetrator's tenancy.

If you are a **sub-tenant** or **boarder/lodger** and the perpetrator is the head-tenant/landlord, you should seek legal advice. See the 'For More Information' section below.

#### Can I change the locks?

If you have an ADVO with an exclusion order (Interim, Provisional, or Final), you can change the locks to your premises. You do not need your landlord's consent, but



you must give them a new key within 7 days, and we recommend providing the landlord with a copy of the ADVO for their records and your safety. You do not have to give copies of the new keys to the perpetrator, and your landlord cannot pass on the keys to them.

### Can I terminate my tenancy and leave?

If you have a Final ADVO with an exclusion order and you are a **co-tenant**, **head-tenant**, or **sub-tenant**, you may be able to terminate your tenancy immediately and without penalty.

You must provide your landlord with a termination notice along with supporting evidence. Supporting evidence includes:

- a certificate for conviction for the domestic violence offence
- a family law injunction
- an interim or final ADVO
- a declaration of a competent person such as a registered healthcare practitioner or social worker in the prescribed form.

You must also provide each co-tenant with a domestic violence termination notice.

A landlord or any remaining co-tenants may apply to NCAT if they wish to dispute the validity of a domestic violence termination notice.

A tenant who ends their tenancy in circumstances of domestic violence will not be liable to pay any compensation or additional money for the early termination.

If you are a **boarder/lodger**, you can give your landlord notice to leave according to your agreement.

### What if I have already left the property?

You can still give your landlord a Domestic Violence Termination Notice even after you have left the property. Your name will stay on the lease, and you will be responsible for the rent until the Domestic Violence Termination Notice has been given to your landlord.

### Damage to the Property

You will not be responsible for damage to your rental property if you can show it was caused by a perpetrator of violence during a domestic violence offence.

**You should write down when and how the damage was caused and take a photo of the damage. You might need this information if your landlord asks for money to pay for the damage.**

### Can I stay in my home?

In addition to the general actions open to you as a tenant, there may be other steps you can take to stay in your home:

- **Co-tenant:** You can apply to the NSW Civil and Administrative Tribunal (NCAT) for an order terminating a co-tenant perpetrator's tenancy. NCAT will consider 'the special circumstances' of your case when deciding whether to make the order.
- **Head-tenant:** You can apply to the NCAT for an order terminating a sub-tenant perpetrator's tenancy on the ground that they have seriously or persistently threatened/abused you or caused you injury.
- **Sub-tenant:** If the perpetrator is another sub-tenant or boarder/lodger, the head tenant is in breach of your agreement by permitting interference with your 'reasonable peace, comfort and privacy'. You can apply to the NCAT for an order that the head-tenant remedy this breach by removing the perpetrator.

### Can I leave my home?

In addition to the general actions open to you as a tenant, there may be other steps you can take to leave:

- **Sub-tenant:** Give the head-tenant a 14-day termination notice for breaching your tenancy agreement by causing (where they are the perpetrator) or permitting interference with your 'reasonable peace, comfort and privacy'.
- **Head-tenant or sub-tenant:** Apply to the NCAT for an order to terminate your tenancy on the ground that you would suffer undue hardship if the tenancy continued. The NCAT will consider the 'special circumstances' of your case in deciding whether to make the order. You may be required to compensate your landlord.

## TENANCY DATABASE LISTINGS

### Ban on Blacklisting

Your landlord or real estate agent cannot blacklist you by putting your name on a bad tenant database if you have ended your tenancy by giving a Domestic Violence Termination Notice.

If you are listed on a tenancy database for issues relating to an incident of domestic or family violence, there are steps you can take to have the information about you changed or removed. More information can be found on the tenancy databases page on the Fair Trading NSW website.



## FOR MORE INFORMATION

### **The Safe Relationships Project (SRP) - Inner City Legal Centre**

The SRP is a state-wide domestic and family violence court support and legal advice service for LGBTIQ people.

[www.iclc.org.au/safe-relationships-project/](http://www.iclc.org.au/safe-relationships-project/)

T: (02) 9332 1966 or 1800 244 481

E: [iclc@iclc.org.au](mailto:iclc@iclc.org.au)

### **Tenants' Union of NSW**

[www.tenants.org.au/factsheet-12-domestic-violence](http://www.tenants.org.au/factsheet-12-domestic-violence)

### **Fair Trading NSW**

[www.fairtrading.nsw.gov.au/housing-and-property/renting/during-a-tenancy/domestic-violence-in-a-rented-property](http://www.fairtrading.nsw.gov.au/housing-and-property/renting/during-a-tenancy/domestic-violence-in-a-rented-property)

### **Fair Trading NSW - tenancy databases**

[www.fairtrading.nsw.gov.au/housing-and-property/renting/starting-a-tenancy/tenancy-databases](http://www.fairtrading.nsw.gov.au/housing-and-property/renting/starting-a-tenancy/tenancy-databases)

### **Share Housing Survival Guide (NSW)**

[www.sharehousing.org/domestic-violence/](http://www.sharehousing.org/domestic-violence/)

*This information is current to 24 August 2021 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on (02) 9332 1966*