



Moving out? What you need to know

Ending an occupancy agreement

An occupancy is terminated if:

- the operator or resident terminates the occupancy in accordance with the *Caravan Parks Act 2012* (the Act)
- a court or the Commissioner of Tenancies terminates the occupancy
- the premises are abandoned before the end of the occupancy agreement
- a resident gives up possession of the premises with the operator's consent
- a sole resident dies without leaving a spouse, defacto, partner or dependent whose details are known to the operator prior to the death
- a person of superior title takes over from the operator and is entitled to possession of the property because of an order of the court or the Commissioner of Tenancies

Long term residents

If a person has resided in a caravan park for five years or more they are considered a long term resident. A person who has resided in a tourist or holiday park will also become a long term resident if they have resided there for five years or more.

- this applies if the five year mark is reached before or after 1 May 2012
- this applies even if the operator has changed
- this applies even if the agreement was not written, there was no agreement, or if the terms of the agreement did not comply with the Act

For terminations, long term residents and operators of all caravan parks (including tourist and holiday parks) have similar rights and responsibilities as operators and residents subject to occupancy agreements under the Act. This includes extended periods of notice, the right to take some disputes to the Commissioner of Tenancies, appeal the Commissioner's decisions and notice requirement provisions.

Importantly, long term residents have extended termination notice requirements:

- if the operator terminates a long term resident's periodic occupancy, for reasons other than a breach of the agreement, they must provide at least three months notice after the date the termination notice is given
- if the operator terminates a long term resident's fixed term occupancy, they must provide at least 42 days notice after the date the termination notice is given

Termination by operator

Premises uninhabitable

The operator can terminate the occupancy agreement by giving the resident one day's written notice in accordance with the Act in the following circumstances:

- if access to the premises has not been available for more than three days because of flooding
- if continued occupation of the premises is a threat to the health or safety of the resident or members of the public or a threat to the safety of the operator's property
- if the premises have become uninhabitable

Drug premises

If a caravan site becomes a drug premises (within the meaning of the *Misuse of Drugs Act*), the operator can terminate the occupancy with a notice of termination requiring vacant possession, no earlier than 14 days from the date of notice.

Serious misconduct by resident

An operator may immediately terminate an agreement on the grounds that the resident or a person who is within the caravan park by consent of the resident, intentionally or recklessly caused or permitted, or is likely to cause or permit:

- serious damage to the agreement property, common areas or other property within the caravan park
- personal injury to the operator or a person in the caravan park or within the vicinity of the caravan park
- serious interference with the reasonable peace, comfort or privacy of residents, the operator or a person residing in the immediate vicinity of the park

The termination must be by notice, but can have immediate effect. Within three days of termination, the operator must give written notice to the Commissioner of Tenancies and state the reasons for it.

Resident's failure to pay rent

If a resident breaches an occupancy agreement by failing to pay rent or any part of the rent in accordance with the agreement and the rent has been overdue for at least 14 days, the operator may give the resident a notice to remedy breach.

The notice must:

- give the resident at least seven days in which to pay the rent that is owed
- state that if the rent owed is not paid then the operator intends to apply to the Commissioner of Tenancies or a Court for an order of termination of the occupancy and possession of the premises

Periodic occupancy

The operator can terminate a periodic occupancy without reason, by giving at least 42 days notice to the resident.

Note - If the resident has been in occupancy for five years or more, the operator must give three months notice.

Fixed term occupancy

An operator can terminate a fixed term occupancy without reason on the termination date, by giving at least 21 days notice to the resident before the date the fixed term occupancy is due to end.

Note - If the resident has been in the occupancy for five years or more, the operator must give 42 days notice.

Termination by resident

Premises uninhabitable

The resident can terminate the occupancy agreement by giving the operator two days written notice in the following circumstances:

- if access to the premises has not been available for more than three days because of flooding
- if continued occupation of the premises is a threat to the health or safety of the resident or members of the public or a threat to the safety of the operator's property
- if the premises has become uninhabitable

Periodic occupancy

The resident may terminate a periodic occupancy, without specifying grounds for termination, by giving at least 14 days notice.

Fixed term occupancy

A resident can terminate a fixed term occupancy on the termination date, without specifying grounds for termination, by giving at least 14 days notice to the operator, before the date the fixed term occupancy is due to end.

Termination by the Court

Serious breach of the occupancy agreement

If either the operator or resident has seriously breached the occupancy agreement, the other party may apply to the Court for an order terminating the occupancy

Conduct of resident unacceptable

The operator or an interested person may apply to the Court for an order terminating the occupancy, if the resident has used the premises for illegal purposes, repeatedly caused a nuisance, or repeatedly caused or permitted interference with the reasonable peace or privacy of nearby residents.

Failure to remedy breach after notice given

If a resident or operator does not remedy the breach as required by a valid notice, an application can be made to the Commissioner of Tenancies or a Court seeking termination of the occupancy and an order for the operator to take possession of the premises or permission for the resident to give up possession of the premises.

The application to the Commissioner of Tenancies must be made no later than 14 days after the date specified in the notice for remedying the breach.

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