



Eastern Area Tenants Service

local tenancy information resource

number 1F



If an agreement is terminated under this section, the tenant could still have to pay compensation to the landlord



An application under this section must be made while the agreement is still in place



Keep all communications with landlords and real estate agents in writing



Terminating a lease because of hardship

A tenant can apply to the NSW Civil and Administrative Tribunal to terminate a fixed term agreement if, “in the special circumstances of the case” the tenant would suffer “undue hardship” were the tenancy to continue.

A tenant making this application may be required to pay compensation to the landlord. The section of the act is reproduced below.

104 Hardship to tenant—fixed term agreements

(1) The Tribunal may, on application by a tenant, make a termination order for a fixed term agreement if it is satisfied that the tenant would, in the special circumstances of the case, suffer undue hardship if the residential tenancy agreement were not terminated.

(2) The Tribunal may, if it thinks fit, also order the tenant to pay compensation to the landlord for the landlord’s loss of the tenancy. The amount of compensation must not exceed the amount specified as the applicable break fee for the tenancy under section 107.

(3) The landlord must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been reasonably avoided by the landlord.

(4) A tenant may make an application under this section without giving the landlord a termination notice.

(5) The Tribunal may make a termination order under this section that takes effect before the end of the fixed term if the residential tenancy agreement is a fixed term agreement.

The tenancy must be still in place for a tenant to make an application under this section – if the tenant moves out and hands they keys back to the landlord or agent, the agreement has terminated, and the NCAT cannot terminate it again. The key parts of this section relate to:

A tenant making an application under this section must have good, objective evidence that addresses the key issues in the table on the next page. This could include:

- Evidence of the special circumstances – for example that the tenant has lost their job, or the nature and effects of unforeseen health problems;
- The nature of the hardship. If the hardship is financial, the tenant will need to produce evidence of their income and outgoings (supported by documents). If the undue hardship is health or family related, the nature of the problem, the effect that that would have on the tenant’s ability to continue the tenancy and the further hardship that would follow if the tenancy were not ended;
- Evidence that the circumstances could not have been reasonably been foreseeable;
- How the tenant has tried to manage the circumstances – for example, evidence of looking for another job;
- How the undue hardship will continue into the future and why it would worsen if the tenancy were to continue;