



# Domestic Violence and Renting

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Gabrielle Craig, Senior Solicitor, Women's Legal Services NSW on 23 July 2013. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

This fact sheet covers common legal issues faced by women experiencing domestic violence who are renting including:

- Ending a tenancy early
- Blacklisting on TICA
- Getting the perpetrator out of the house and off the lease
- Changing the locks
- Getting the bond back

## Language and Terminology

- **Residential Tenancy Agreement (RTA)**: another word for a lease. It is a legal contract and can be a written or verbal agreement.
- There are two types of agreements:
  - **Fixed term** – for a specified period (e.g. 6 months); and
  - **Periodic** – no fixed term is specified
- **Sole tenant** - Someone is a sole tenant if they are the only person named on the Residential Tenancy Agreement
- **Co-tenant** - Someone is a co-tenant if they are one of two or more people named on the Residential Tenancy Agreement
- **Occupant** - An occupant is someone who is living in the property but is not a tenant

## Case Study

Sarah and Mitch signed a Residential Tenancy Agreement together and moved into a rental property two months ago. Sarah and Mitch are co-tenants and the lease is for six months. Mitch has become increasingly violent and Sarah is really worried. Mitch drinks a lot and when he is angry he throws things. A few days ago he punched two holes in the wall. Mitch has also smashed one on the windows and the back door is coming off at the hinges after he slammed it. Mitch got fired from his job and has stopped paying his half of the rent. Sarah doesn't want to live with Mitch anymore.

Sarah decides that she wants to leave and to go to a women's refuge. After a few months she decides to apply for a private rental property on her own. After being rejected by a number of real estate agents she finds out that she has been blacklisted on TICA (the "bad tenant" database). She calls up her old real estate agent who tells her the matter has been to the Tribunal and she owes the landlord rent for the last three months and \$1000 for the damage to the property.

### **Is Sarah liable for rent owed after she left and for the damage caused to the property by Mitch?**

Yes. Sarah was still required to make sure the rent was paid even after she left the property. Even though Mitch caused the damage, as a co-tenant, she is liable for any damage caused by another tenant.

This is a very common scenario. Often if someone has had to leave quickly and if they have fears for their safety they may not have given their real estate agent their new address. This means Consumer, Trader and Tenancy Tribunal (CTTT) proceedings might have gone ahead without them even knowing about it.



Even if Sarah was able to participate in the proceedings she would likely however still have been found liable to pay.

A tenant can be blacklisted if there has been a breach of the Agreement and because of the breach, they owe an amount more than the bond for the tenancy agreement or the CTTT has made a termination order.

### **What could Sarah have done differently?**

1. There is a special provision that says that if Sarah has a **Final Apprehended Domestic Violence Order** that includes an order that prohibits Mitch from accessing the property, she is allowed to end her tenancy by giving her landlord 14 days written notice.
2. If Sarah doesn't have a Final AVO that prohibits access she can make a special application to the CTTT for an order ending her tenancy. She would have to provide evidence to the Tribunal that this was appropriate given the **"special circumstances of the case."**
3. Alternatively, Sarah could have ended her tenancy with the consent of both the landlord and Mitch. In some circumstances this will work but it is often difficult to come to this sort of agreement where there is domestic violence. It is very important in this instance to get the paperwork right so Sarah should get legal advice or talk to a tenant's advocate!

Sarah's options would be different if she was in a periodic agreement or if she was the sole tenant on the lease.

### **Can Sarah do anything if she has been listed on TICA (the "bad tenant" database)?**

Yes. Sarah can make an application to the CTTT for an order that her name be removed from the TICA database. Sarah will need to provide evidence to the Tribunal that the listing is "unjust in the circumstances."

Being blacklisted on TICA can make it nearly impossible to rent so it is really important for a listing to be removed if at all possible. There are other rules about tenant databases that might be relevant so if someone has been listed on TICA they should talk to a lawyer or a tenant's advocate as soon as possible.

### **What if Sarah wants to stay?**

There are lots of reasons why someone might want to stay in a property rather than move out. For example, their home might be close to the kid's school or to their work or other support networks.

If Sarah wants to stay living in the property the best option would be to report the violence to the police and to ask them to assist her with an application for an **Apprehended Domestic Violence Order (ADVO)**. The Police can ask the court to make an order excluding Mitch from the premises. Mitch will not be able to live in the property even if there is only an interim order excluding him from the premises. **Once a final order is made his tenancy will end effective immediately.**

If the police won't make the application for Sarah then she might be able to make a private application. Sarah should speak to a solicitor for some legal advice!



### **What if Sarah can't get an AVO?**

If Sarah cannot get an ADVO there is a special provision that says she can ask the CTTT for an order ending Mitch's tenancy.

Sarah will have to provide the Tribunal with evidence that this is necessary in the **"special circumstances of the case."**

**\*Remember:** If Mitch is no longer on the lease, Sarah will have to pay for all of the rent on her own. Before making the decision to stay Sarah will need to work out if she can afford the rent on her own.

### **Can Sarah change the locks?**

Sarah can only change the locks if she has:

- The landlord's permission; or
- A "reasonable excuse," this includes:
  - In an emergency, or
  - In accordance with an order of the Tribunal; or
  - After the tenancy of a co-tenant was terminated; or
  - After a tenant or occupant was prohibited from having access to the residential premises by an apprehended violence order.

If a tenant changes the locks without a reasonable excuse they risk a **\$2,200 fine!**

Usually, once the locks are changed a copy of the key must be given to the other parties on the lease within 7 days. For a co-tenant, this means giving copy of the key to the landlord AND to **the other co-tenant on the lease**. For Sarah, this means that although she may have a reasonable excuse to change the locks she must also give a copy of the key to Mitch if he is still on the lease!

**Exceptions:** Sarah doesn't have to give Mitch a copy of the key if:

- There is an AVO in place that prohibits access to the property; or
- If there isn't an AVO with an exclusion order Sarah will need to apply to the CTTT for an order that she doesn't have to provide Mitch with a copy of the key. She will need to provide evidence to the Tribunal that this is reasonable in the circumstances

### **Getting the bond back:**

Getting the bond back can be particularly tricky where parties are co-tenants on the lease.

There are some special provisions in the tenancy legislation around getting the bond back where there is a Final AVO prohibiting access so it is important to get some more advice!

#### **Where to get advice from a solicitor or tenant's advocate**

- Tenants' Union NSW  
[www.tenants.org.au](http://www.tenants.org.au)
- LawAccess  
1300 888 529  
<http://www.lawaccess.nsw.gov.au/>
- Community Legal Centres (CLCs)  
[http://www.clcsw.org.au/postcode\\_search.php](http://www.clcsw.org.au/postcode_search.php)