

Eviction

In order to evict you, the landlord must:

1. Give you a valid Notice to Vacate (see the **Notices to Vacate** fact sheet for more information); and
2. Apply to the Victorian Civil and Administrative Tribunal for a Possession Order; and
3. Purchase a Warrant of Possession from the Tribunal; and
4. Give the Warrant of Possession to the police, which the police will use to evict you

➔ The landlord cannot have you evicted until they have taken all of the steps above. The landlord or agent cannot lock you out or personally carry out an eviction; only the police can evict you and only when they are acting on a Warrant of Possession.

Applications for Possession Orders

There are two procedures that landlords can use to apply to the Tribunal for a Possession Order—the standard procedure or the alternative procedure. The standard procedure is the most common.

The standard procedure

Under the **standard** procedure, the landlord sends you a Notice to Vacate followed by a copy of their application to the Tribunal for a Possession Order—the landlord cannot apply to the Tribunal for a Possession Order until they have given you the Notice to Vacate. (See the **Notices to Vacate** fact sheet for more information.)

If the landlord has given you a Notice to Vacate for the end of a fixed-term tenancy agreement or a Notice to Vacate for no reason, then the landlord cannot apply to the Tribunal unless you have not vacated the premises by the date required on the Notice to Vacate.

When the Tribunal has received the landlord's application, a hearing will be set to take place after the Notice to Vacate has expired. See 'Tribunal hearings' overleaf.

The alternative procedure

A landlord can only use the **alternative** procedure for possession for:

- > rent arrears, if your rent is more than 14 days overdue; or
- > the end of a fixed-term tenancy

If the landlord wants to use the **alternative** eviction procedure for **rent arrears**, they must send you all of the following documents at the same time:

- > a Notice to Vacate of at least 14 days
- > a copy of their application to the Tribunal for a Possession Order
- > 2 copies of a Notice of Objection
- > a statement setting out your rights in relation to a Possession Order

If you receive a notice for **rent arrears** using the alternative procedure and you do not want to be evicted you must give the **Notice of Objection** to the Tribunal **before 4pm on the termination date** that is on the notice. You should contact the Tenants Union immediately for advice.

If the landlord wants to use the **alternative** eviction procedure for the **end of a fixed-term tenancy agreement**, they must:

- > have previously given you a Notice to Vacate for that reason; and
- > send you a notice within the specified time (depending on the length of the fixed-term tenancy agreement) that they intend to use the alternative procedure. The landlord's notice of intention to use the **alternative** eviction procedure must include:
 - > a copy of their application to the Tribunal for a Possession Order; and
 - > 2 copies of a Notice of Objection; and
 - > a statement setting out your rights in relation to a Possession Order

If you receive a notice for the **end of a fixed-term tenancy agreement** using the alternative procedure and you do not want to be evicted you must give the **Notice of Objection** to the Tribunal **within 4 business days**. You should contact the Tenants Union immediately for advice.

continued overleaf...

Tribunal hearings

If your landlord applies to the Tribunal for a Possession Order using the standard procedure or you object under the alternative procedure, the Tribunal will set a hearing date to take place after your Notice to Vacate has expired.

You will be notified of the time, date and place of the hearing. **You must go to the hearing to dispute your landlord's claim if you do not want to be evicted.**

You can also ask the Tribunal to postpone any eviction (for up to 30 days) on the grounds of hardship. However your hardship must be greater than any hardship caused to the landlord.

If the Tribunal Member rejects the landlord's application for a Possession Order, you do not have to move out. Remember however, if you do not go to the hearing, it is most likely that the Possession Order will be granted.

For more information see the **Victorian Civil and Administrative Tribunal** fact sheet.

Warrant of Possession

If the Tribunal Member grants a Possession Order, the landlord has up to 6 months to purchase the Warrant of Possession, which gives the police the power to evict you. Once purchased, the Warrant of Possession is valid for a fixed time, **usually 14 days.**

However, if the Tribunal Member grants a Possession Order that requires you to vacate the property on the same day as the hearing, the landlord can purchase the Warrant of Possession on the same day. If they give the warrant straight to the police, you could be evicted on the same day.

If your landlord is granted a Possession Order, you can contact your local police to find out when they plan to carry out the eviction.

If you are likely to be evicted, it is a good idea to make arrangements so you will have somewhere to stay, especially if you may be evicted on the same day or at short notice. If you have nowhere to go, you should contact the Tenants Union and we can direct you to crisis accommodation services.

Review hearings

If you find out that a Possession Order has been granted but you didn't go to the hearing, you can apply to the Tribunal for a rehearing or a **review.** You need to do this before the police evict you, as once you have been legally evicted the Tribunal has no power to allow you back into the property.

If possible, you should apply for an urgent review hearing by going to the Tribunal in person. If you live in the country or cannot get to the Tribunal, you should phone the Tribunal and ask them how to apply for a review hearing, or contact the Tenants Union.

Victorian Civil and Administrative Tribunal
55 King Street Melbourne 3000
☎ (03) 9628 9800
☎ 1800 133 055 (Freecall)
fax (03) 9628 9822

Open 9.00am to 4.30pm Monday to Friday

When you apply for a review hearing, you should ask the Tribunal to contact the police and ask them to put a stop on the warrant until further notice. You should also call the police yourself to confirm this.

At the review hearing you will need to convince the Tribunal Member that you had a good reason for not going to the original hearing. If the Tribunal accepts your explanation, they will set aside their earlier decision and allow the matter to be reheard. There is no fee for applying for a review hearing.

Illegal evictions

➔ It is illegal for a landlord or agent (or anyone acting on their behalf) to attempt to physically evict you or to change the locks. Only the police can carry out an eviction.

If the landlord or agent threaten to evict you, you should apply to the Tribunal for a Restraining Order. If the landlord or agent show up at the property and attempt to evict you, you should call the police immediately.

If you have been illegally evicted, you should immediately apply (in person if possible) for an urgent hearing at the Tribunal. The Tribunal can order the landlord to let you back into the property.

You should also lodge a complaint with the Director of Consumer Affairs Victoria. There are harsh penalties for individuals and companies that are convicted of carrying out an illegal eviction.

You can also seek compensation for any inconvenience, costs, loss or damage to your goods caused by the landlord's illegal actions. See the **Complaints about estate agents and landlords** and **Claiming compensation** fact sheets for more information.

For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.