

Breach of Duty Notices

1. Giving the owner a Breach of Duty Notice

As a rooming house resident, you have legal rights. These are set out in the *Residential Tenancies Act 1997*, which is the law that covers rooming house residents and owners (and their agents or managers) in Victoria.

If the rooming house owner fails to carry out their duties under the *Residential Tenancies Act 1997*, you can give them a Breach of Duty Notice. This tells the owner that if they don't fix the problem or pay you compensation (or both), you will take the matter to the Victorian Civil and Administrative Tribunal (the Tribunal) for an order that they do so.

➔ Breach of Duty Notices are available from the Tenants Union Advice Service ☎ (03) 9416 2577. We can help you fill in the notice and tell you how to serve it on your rooming house owner. We can also help you apply to the Tribunal and represent you at a Tribunal hearing if necessary.

When can you serve a Breach of Duty Notice?

You can give the rooming house owner a Breach of Duty Notice when they have failed to:

- > keep the room or rooming house in good repair
- > provide 24 hour access to your room
- > provide 24 hour access to the toilet/bathroom facilities
- > provide access to other facilities during reasonable hours
- > allow proper use and enjoyment of your room and the facilities of the rooming house
- > allow privacy, peace and quiet
- > take reasonable steps to provide security of your property in your room
- > keep inconvenience or disruption to a minimum during repairs or renovations
- > provide alternative facilities while carrying out repairs or renovations

- > display a written statement of 'rights and duties' and a copy of the house rules in your room and provide you with copies on (or before) the day you move in
- > provide the owner's full name and address and an emergency telephone number
- > make house rules for the use and enjoyment of rooms and facilities
- > give at least 7 days' written notice of a proposed change to house rules
- > make sure the house rules are reasonable and are enforced fairly

➔ The reasons for which tenants and residents can be given a Breach of Duty Notice are different. If you have a tenancy agreement (lease) with the rooming house owner, see our **Breach of Duty Notices** fact sheet for tenants or contact the Tenants Union Advice Service for advice.

Getting a breach of duty fixed

If the owner doesn't meet one or more of the duties listed above, your first step is to serve them with a Breach of Duty Notice.

This notice tells them that they need to fix the problem within 3 days (or 5 days if you send the notice by mail). It also lets them know that if they don't fix the problem, you will apply to the Tribunal for an order that they do so. (Remember the Tenants Union Advice Service can help you with each step).

Claiming compensation

If the owner has breached any of the above duties, and as a result you have suffered some kind of loss or have been substantially inconvenienced, you can use a Breach of Duty Notice to claim compensation.

You should wait until the problem is fixed so you know the final amount to put in your compensation claim.

➔ The Tenants Union Advice Service can tell you if you can claim compensation and can help you work out the amount that you should claim.

continued overleaf...

2. If you are given a Breach of Duty Notice

As a rooming house resident, you have legal duties as well as legal rights. These are set out in the *Residential Tenancies Act 1997*, which is the law that covers rooming house residents and owners (and their agents or managers) in Victoria.

Some of your duties under the *Residential Tenancies Act 1997* include:

- > paying rent
- > following the house rules
- > not disturbing the peace, 'quiet enjoyment' or privacy of other residents (or allowing your visitor/s to do so)
- > keeping your room in a reasonably clean condition
- > notifying the owner of any damage that you (or your visitor/s) have done to your room or to other areas of the rooming house, and paying the rooming house owner compensation
- > reporting problems with furnishings, facilities or fixtures provided by the owner
- > not adding fixtures to your room (such as putting in picture hooks) without the owner's agreement in writing
- > not keeping a pet without the owner's permission
- > not refusing entry to your room by the owner if they have given 24 hours' written notice and are entering for a reason listed in the *Residential Tenancies Act 1997*, and the entry is between 8am and 6pm and not on public holidays

If the rooming house owner believes that you haven't met your duties under the *Residential Tenancies Act 1997*, they can serve you with a Breach of Duty Notice.

A Breach of Duty Notice can only be used for the breach of a duty listed under the *Residential Tenancies Act 1997*—it is not valid if used for any other reason.

The Breach of Duty Notice must tell you:

- > which duty under the *Residential Tenancies Act 1997* the owner claims you have breached and how you have breached it
- > the loss or damage that the owner claims you have caused
- > what the owner wants you to do (or stop doing) to fix the problem

- > the amount of compensation the owner is claiming (if any)
- > that you must not breach the same duty again
- > if you don't fix the breach and/or pay compensation, the owner can apply to the Victorian Civil and Administrative Tribunal for an order that you fix the breach and/or pay compensation
- > that you can be given a Notice to Vacate if you breach the same duty for the third time (but only if you have been given a Breach of Duty Notice on each occasion)
- > that you can contact Consumer Affairs Victoria for advice

If you receive a Breach of Duty Notice you should contact the Tenants Union Advice Service on ☎ (03) 9416 2577.

Defending a compensation claim

You don't have to pay compensation just because the rooming house owner has given you a Breach of Duty Notice. Contact the Tenants Union Advice Service for advice on how you may be able to defend the owner's compensation claim.

Further breaches

If you have been given a Breach of Duty Notice and you don't fix the breach, the rooming house owner can give a second notice and/or apply to the Victorian Civil and Administrative Tribunal for a Compliance Order (which is an order that you stop causing the problem), and/or an order that you pay compensation.

If the Tribunal makes a Compliance Order in favour of the owner and you don't carry it out, the owner can give you a 14-day Notice to Vacate.

The owner can also give you a 14-day Notice to Vacate if you breach the same duty for the third time and on both earlier occasions you were given a valid Breach of Duty Notice.

If think you have been given a Breach of Duty Notice unfairly, it's a good idea to write to the owner explaining why you shouldn't have received the notice. The Tenants Union can help you do this.

For more information, advice or support, phone the Tenants Union Advice Service on ☎ (03) 9416 2577.