

Notices to Vacate

If the landlord wants you to move out of the property, they must give you a valid Notice to Vacate. There are various reasons why your landlord can give you a Notice to Vacate and the length of the notice period depends on why the landlord is giving you notice.

It is important to note that just because you receive a Notice to Vacate, it doesn't necessarily mean that you have to move out. If they want to have you evicted, the landlord must first apply to the Victorian Civil and Administrative Tribunal and convince the Tribunal that they should be granted a Possession Order. See the **Eviction** fact sheet for more information.

Immediate Notice to Vacate

The landlord can give an immediate Notice to Vacate if the rented premises are destroyed or unfit to live in. An immediate notice can also be given if you (or a visitor to your home) deliberately damage the property or endanger the safety of neighbours.

The Tribunal requires substantial proof from landlords in these cases. If you receive an immediate Notice to Vacate you should seek urgent advice from the Tenants Union.

14-day Notice to Vacate

A 14-day Notice to Vacate can be given when:

- > your rent is 14 days in arrears (ie overdue)
- > you fail to pay the bond (if your tenancy agreement says you have to pay a bond)
- > you sub-let the premises without the landlord's consent
- > your lease has a condition prohibiting children from living on the premises and you are breaking that condition
- > you use the property for an illegal purpose (or allow other people to do so)
- > you are a public tenant and you put a statement on your application form that you knew was incorrect
- > you fail to meet with a Compliance Order made by the Tribunal

> you have breached a duty and have received two previous Breach of Duty Notices for the same breach

60-day Notice to Vacate

A 60-day Notice to Vacate can only be given where there is no fixed-term lease, or when the termination date on the notice (ie the date that you have been given to vacate on or by) is on or after the expiry date of your fixed term.

The landlord can give you a 60-day Notice to Vacate when, immediately after the 60-day period, the premises will be:

- > demolished
- > used for any purpose other than as a rented residence (such as a business)
- > occupied by the landlord, or the landlord's spouse, son, daughter, parent or spouse's parent, or someone who normally lives with the landlord and is dependent on the landlord
- > sold with vacant possession
- > repaired, renovated or reconstructed, and this cannot be done without the premises being vacant
- > used for public purposes (if it is public property)

If the landlord serves a notice for any of the first 4 reasons above, they cannot re-let the premises again for 6 months after the notice is given.

A 60-day Notice to Vacate can also be given if the landlord has entered into a contract of sale of the rented premises.

120-day Notice to Vacate

The landlord can serve a no-reason 120-day Notice to Vacate when you have a periodic (ie month to month) agreement or when the termination date on the notice is on or after the expiry date of your fixed term.

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End of fixed-term lease

The landlord can give you a Notice to Vacate at the end of your fixed term. The termination date on the notice must be the same as the expiry date on your fixed-term tenancy agreement. If you have a fixed-term agreement for less than 6 months, the landlord can serve a 60-day Notice to Vacate. If you have a fixed-term agreement for 6 months or more, the landlord can serve a 90-day Notice to Vacate.

If you are given Notice to Vacate because you are coming to the end of a fixed-term agreement, you still have to give your landlord notice in writing that you intend to leave. See the **When you want to leave** fact sheet for more information.

Landlord's principal place of residence

If the property was the landlord's main place of residence before you moved in, they may give you a 14-day Notice to Vacate if:

- > you have a fixed-term tenancy agreement; and
- > the termination date on the notice is on or after the expiry date on your tenancy agreement; and
- > it is stated on your tenancy agreement that the premises were the landlord's main place of residence before you moved in; and
- > it is stated on your tenancy agreement that the landlord intends to move back in at the end of the fixed term.

Leaving before the notice expires

If you have a fixed-term agreement you have a legal right to stay until the end of that term (except in the case of 14 days rent arrears or if the premises are dangerous, damaged or unfit for habitation). However, if you do want to move out earlier you can always try to negotiate an agreement with your landlord or agent. Make sure that you get the agreement in writing, signed by you and your landlord or agent. See the **Breaking a lease** fact sheet for more information.

If you don't have a fixed-term lease

If you have a periodic lease (ie month to month), or if your fixed term has expired and your tenancy has continued without a new

term being fixed, your landlord can give you a 60- or 120-day Notice to Vacate. In these circumstances you only have to give 14 days written notice of your intention to vacate.

Serving a notice

A Notice to Vacate must be in the proper form and be signed and dated by the landlord or agent. It must be given to you in person or be sent by registered mail. (It cannot just be left in your letterbox or under your door.) If the notice is sent by mail, the date on the notice must take into account the time it would take to reach you (ie 2 full business days).

The reason that the notice is being given must be clearly stated and it must be a valid reason (except in the case of a no-reason 120-day Notice to Vacate).

If it does not meet all of these requirements, a Notice to Vacate is invalid.

Challenging a Notice to Vacate

You can challenge a Notice to Vacate if you think that it is invalid. However you must do so within 30 days from the date that you receive it.

You can also challenge a 120-day no-reason Notice to Vacate or an end of fixed-term Notice to Vacate if you believe that it has been given to you in retaliation for exercising your rights under the *Residential Tenancies Act 1997* (eg asking for repairs). The following time limits apply to challenging a notice given in retaliation:

- > 60 days to challenge a 120-day no-reason Notice to Vacate
- > 21 days to challenge a 60-day end of fixed-term Notice to Vacate for a fixed term of less than 6 months
- > 28 days to challenge a 90-day end of fixed-term Notice to Vacate for a fixed term of 6 months or more

If you have received a Notice to Vacate and would like to know if you can challenge it, contact the Tenants Union as soon as possible.

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