TENANTS UNION of Victoria Ltd

your step-by-step guide to avoiding eviction for rent arrears

June 2009

START HERE

Is your rent 14 days or more overdue?

- YES → Unpaid rent in advance is not counted as rent in arrears. You can only be in arrears for rent that is already *overdue.*
- NO → Your landlord cannot start the eviction process unless your rent is 14 days or more overdue.

Contact your landlord or agent immediately and tell them when you will pay. If you can't pay in full, offer to pay the arrears over time (eg $20 per week on top of your usual rent).

Make the offer in writing and keep a copy. Even if your offer is rejected you can use it as evidence that you tried to repay the arrears.

If the landlord wants to evict you they must follow the proper steps. Only the police can carry out the eviction, and only after the landlord has obtained the proper documents from the Victorian Civil and Administrative Tribunal (the Tribunal).

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

STEP 1: 14-day Notice to Vacate

If the landlord rejects your offer or you break the repayment agreement, and you are still 14 days in arrears, the landlord can give you a 14-day Notice to Vacate.

The landlord must give the Notice to Vacate BEFORE they apply to the Tribunal for a Possession Order for your eviction. Otherwise the notice is invalid.

Is the Notice to Vacate in the proper form provided by Consumer Affairs Victoria and hand delivered or sent to you by registered mail?

- YES
- NO
- UNSURE

The notice may be invalid. Contact the Tenants Union immediately for advice.

Do you want to remain living in the property?

- YES
- NO → Time to move out.

You can still try and negotiate a repayment plan. If you do, get the agreement in writing, signed by the landlord/agent. Keep your copy in a safe place.

Check with the Tribunal that any application by the landlord has been withdrawn before the hearing date.

STEP 2: Application for Possession Order

Has the landlord given you a 14-day Notice to Vacate followed by a copy of their Tribunal application?

- YES → Unless the landlord withdraws their Tribunal application, you will be sent a Notice of Hearing. You MUST go to the hearing (or arrange for an adjournment) or the landlord may automatically be granted a Possession Order.
- NO → Has the landlord given you a 14-day Notice to Vacate, a copy of their Tribunal application, 2 copies of a Notice of Objection and a statement of your rights regarding a Possession Order (all at the same time)?

YES → You must fill out the Notice of Objection and send one copy to the landlord and the other to the Tribunal. (Make a copy for your own records.) Return the Notice of Objection by registered mail or in person no later than 4.00pm on the day that the 14-day Notice to Vacate expires.

Did you return the Notice of Objection as above?

- YES → Unless the landlord withdraws their Tribunal application, you will be sent a Notice of Hearing. You MUST go to the hearing (or arrange for an adjournment) or the landlord may automatically be granted a Possession Order.
- NO → Unless the landlord decides to withdraw their Tribunal application they may automatically be granted a Possession Order and you may be evicted without further notice.

If you want the Tenants Union to help you prepare for the Tribunal hearing, seek our advice as soon as you receive the Notice to Vacate.

STEP 3: Tribunal hearing

The Tribunal member will decide whether:
a) the landlord's application for a Possession Order is valid; and
b) you can prove that you will repay the arrears and therefore may be entitled to stay in the property.

Did the Tribunal member decide that if you repay the arrears you are able to stay in the property?

- YES → You must obey the order or the landlord/agent can go back to the Tribunal without giving you notice and you will probably be evicted.
- NO → **STEP 4: Possession Order**

If the Tribunal grants a Possession Order, the landlord can purchase a Warrant of Possession, which authorises the police to evict you.

For more information see our fact sheets:
> Avoiding eviction for rent arrears
> The Victorian Civil & Administrative Tribunal