

Claiming compensation

When & what can you claim?

If your landlord or agent have failed to carry out any of their duties under your tenancy agreement (lease) or the *Residential Tenancies Act 1997*, you can apply to the Victorian Civil and Administrative Tribunal for compensation.

You must prove that you suffered loss (eg damage to goods) or substantial inconvenience, and that this was a result of the landlord or agent's actions or failure to act.

Some examples of situations where you could claim compensation at the Tribunal are:

- > if the landlord hasn't repaired a problem that you have told them about (eg a leaking roof)
- > if the landlord has evicted you or has tried to evict you illegally
- > if the landlord has disturbed your 'quiet enjoyment' of your rental property (eg the landlord or agent keep coming around without giving notice and/or without proper reason as listed under the Act)
- > if the premises were not clean when you moved in

The Tribunal has a \$10,000 compensation claim limit under the *Residential Tenancies Act 1997*. If your compensation claim is for more than this, contact the Tenants Union for advice. You may be able to make a claim under the *Fair Trading Act 1999*, which has no financial limit.

➔ You can't claim compensation under the *Residential Tenancies Act 1997* for pain and suffering, physical injury or death, but you may be able to make such a claim under the *Fair Trading Act 1999*. Contact the Tenants Union for advice.

Repairs

The most common compensation case is when the landlord has failed to carry out repairs. (See the **Repairs** fact sheet for more information.) It is a good idea to wait until the repairs have been done before you claim compensation, as the Tribunal will not always hear cases where the compensation is still

adding up. However, you should notify your landlord that you intend to claim compensation, and that the longer they delay the repairs the more you will be able to claim. This will sometimes persuade the landlord to carry out repairs more quickly.

How to claim

If you want to claim compensation for a breach of duty under the *Residential Tenancies Act 1997* and you are still in the property, you need to serve the landlord with a Breach of Duty Notice. (See the **Giving your landlord a Breach of Duty Notice** fact sheet for more information.)

Copies of the notice are available from the Tenants Union.

When you fill out the Breach of Duty Notice, you must include:

- > the landlord's name (not the agent's name)
- > details of the landlord's breach (what they have done wrong)
- > what action the landlord should take to fix the problem (eg repair the roof)
- > the compensation you are claiming for loss or damage (eg the cost of cleaning clothes and goods that got wet and dirty as a result of the roof leak) or inconvenience you experienced (eg staying at a friend's house while your bedroom was flooded)
- > the amount of money you are claiming for anything that can't be fixed (eg damage to your goods caused by water leaking through the roof)

You can claim for several matters on the one form. Attach an extra page if you need more space. If you want to make a claim for loss of amenity (ie for not being able to make full use of the property), you will need to put a dollar value on this. At the Tribunal you must be able to explain the amount you are claiming for each item and provide proof of your claim.

Contact the Tenants Union if you need help to work out the amount of compensation you should claim.

continued overleaf...



➡ To work out your claim for loss of amenity, calculate a percentage of your daily rent (based on how much of the property was affected) and multiply this by the number of days that you had to put up with the problem. Contact the Tenants Union if you need help to work out the amount that you should claim.

Give a copy of the Breach of Duty Notice to the landlord or agent and keep a copy for yourself. Send it by registered mail or deliver it personally so you can prove that they received it. Keep your mail receipt. You must then wait 14 days (allow an extra 2 days if you sent the notice by mail) to see if the landlord pays you the compensation.

If the landlord doesn't pay, you can apply to the Tribunal. Complete a Victorian Civil and Administrative Tribunal application form and attach a copy of the Breach of Duty Notice. The Tribunal has a \$36.20 application fee (at the time of printing).

If you have moved out of the property

If you want to make a compensation claim after you have moved out of the property, you do not need to serve a Breach of Duty Notice. You simply need to complete a Victorian Civil and Administrative Tribunal application form. On the application form you should state how much compensation you are seeking and why you are seeking it.

➡ It is a good idea to write to the landlord before you make your application to see if you can settle the matter before going to the Tribunal. You should state in your letter that you will apply to the Victorian Civil and Administrative Tribunal if they do not agree to pay within a set time such as 14 days. Keep a copy of the letter as you can use this as evidence at the Tribunal.

Proving your claim

If you have applied to the Tribunal for compensation, you will have to go to a hearing and prove your case. You must convince the Tribunal that your landlord failed to carry out their legal obligations to you and that you suffered loss and/or damage as a result.

You will need evidence (eg photographs, witnesses, letters you have written to your landlord or agent, receipts for expenses or quotes for repairing damage to goods). You will also need to be able to explain to the Tribunal how you have calculated your compensation claim. You should contact the Tenants Union to discuss your case as soon as you receive notice of the hearing.

For more information see the ***Victorian Civil and Administrative Tribunal*** fact sheet and ***A Day at the Bench*** DVD Kit.

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