

Avoiding eviction for rent arrears

If you do not pay your rent on the day that it is due, you will be 'in arrears'. If you are 14 days in arrears, your landlord can give you a 14-day Notice to Vacate. However, they can only give you the notice for rent that is actually overdue. They cannot give you a Notice to Vacate for not paying your rent in advance.

If you are in arrears, and you are unable to make a payment, contact your landlord or real estate agent as soon as possible and tell them when you will be paying. If you can't pay the arrears in one payment, you should offer to pay them off over time (eg an extra \$20 per week). Don't offer to pay more than you can afford. Make the offer in writing and keep a copy—even if the landlord or agent don't accept your offer, you can use your letter as evidence that you tried to resolve the problem.

If you need help to make a payment plan, phone the Financial & Consumer Rights Council on ☎ 9663 2000 for the number of your nearest financial counsellor.

If the landlord or agent rejects your offer or you are unable to make any payments, the landlord must follow one of the legal procedures below if they want to evict you.

➡ It is illegal for your landlord or agent to personally attempt to evict you. Only the police can evict you and even then, they must have a valid Possession Order and a Warrant of Possession from the Victorian Civil and Administrative Tribunal. (See the **Eviction and Complaints about landlords and real estate agents** fact sheets for more information.)

The Eviction Process

There are two procedures that the landlord can follow if they want to evict you for rent arrears: the standard procedure or the alternative procedure.

Standard Procedure

Step 1. 14-day Notice to Vacate

As mentioned, if you are 14 days or more in rent arrears, the landlord can give you a 14-day Notice to Vacate. This notice must be hand delivered or sent to you by registered mail.

➡ If you are not 14 days in rent arrears at the time of receiving the notice, it is invalid.

If you receive a Notice to Vacate, you do not have to move out of the property if you don't want to. The notice is just the first step in taking the matter to the Victorian Civil and Administrative Tribunal. It is not too late to try and negotiate a payment plan with the landlord or agent.

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

Step 2. Application & Notice of Hearing

The landlord must give you a Notice to Vacate **before** they apply to the Tribunal for a Possession Order. Otherwise their application is invalid and should be dismissed. You should receive a copy of the landlord's application to the Tribunal.

Once they have received the landlord's application, the Tribunal will set a hearing date. They will send you a Notice of Hearing, which tells you the time, date and place of the hearing. **If you want to avoid being evicted, you must go to the hearing**, even if you have paid the rent arrears or entered into a payment agreement with your landlord or agent. If you don't go to the hearing, the Tribunal may grant the landlord a Possession Order.

➡ If your landlord or agent tell you that you do not need to go to the hearing because you have paid off the rent arrears or for any other reason, **it is very important that you phone the Tribunal on ☎ 9628 9800 to ask if the application has been withdrawn.** If it hasn't, then you must go to the hearing if you want to avoid eviction.

If you cannot go to the hearing, you will need to apply for an adjournment at least 2 days before the hearing date. See the **Victorian Civil and Administrative Tribunal** fact sheet or contact the Tenants Union for advice.

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Step 3. Tribunal hearing

At the Tribunal hearing you may be able to have the 14-day Notice to Vacate dismissed if it is invalid for any reason. Contact the Tenants Union and ask them to check the validity of the notice as soon as you receive it.

At the hearing, the Tribunal Member can make a Possession Order if you were 14 days in arrears at the time that you were given the 14-day Notice to Vacate. The Tribunal Member can also decide to either dismiss or adjourn the landlord's application for a Possession Order. The Member may adjourn the application if:

- > you can show that a payment plan has been agreed upon
- > you can show the Tribunal how you can pay off the arrears
- > the landlord will not suffer any financial loss as a result

You should collect as much evidence as you can to support your claim, such as a statement from a financial counsellor that outlines your income and expenditure and shows that you can pay off the arrears. Other useful documents are medical certificates, letters from your employer or a social worker and receipts for any extra expenses that have made it hard for you to pay your rent. You can also ask anyone who can support your case to give evidence at the hearing.

If the Tribunal adjourns the application it will be for a set period of time, usually 3 months. This means that if you repay the arrears according to the Tribunal order, on the set date the Tribunal will consider the application to be withdrawn and the matter will be closed. However if do not strictly abide by the order, eg you are one day late in making a payment, your landlord can 'renew' the application and you will receive a Notice of Hearing. If this happens, you must go to the hearing and give a good reason for not abiding by the order, or there is a chance that you will be evicted.

For more information on going to the Tribunal, see the **Victorian Civil and Administrative Tribunal** fact sheet, **'A Day at the Bench' DVD Kit** or contact the Tenants Union for advice.

Step 4. Possession Order

If the Tribunal grants a Possession Order, the landlord or agent can purchase a Warrant of Possession, which is a direction to the police to evict you from the property. The landlord or

agent have 6 months from the day that they get the Possession Order to purchase a Warrant of Possession, but they usually do this within days of the hearing.

Once the warrant is given to the police, they can evict you at any time within the period specified on the warrant, which could be 7, 14 or a maximum of 30 days. You could be evicted as early as the day after the Tribunal hearing. Remember, only the police can evict you.

If you are evicted, your possessions may still be in the property and you will have to make arrangements with the landlord or agent to let you into the property to get them. The landlord or agent cannot hold onto your goods because you owe them money. (See the **Goods left behind** fact sheet for more information.)

Alternative procedure

If they choose to follow the alternative procedure, the landlord must send you the following documents at the same time:

- > a 14-day Notice to Vacate
- > 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 the application

If you want to challenge the landlord's application, you must fill out the Notice of Objection and send one copy to the landlord and the other to the Tribunal by a given date (keep a copy for your own records).

The Notice of Objection must be returned no later than 4.00pm on the day that the 14-day Notice to Vacate expires. Send the Notice of Objection by registered mail and allow 2 business days for delivery. If it is less than 2 days until the Notice to Vacate expires, you should take the Notice of Objection into the Tribunal in person to make sure it arrives in time.

If you don't return the Notice of Objection, the landlord may be automatically granted a Possession Order and you may be evicted without further notice. If you do return the Notice of Objection, the Tribunal will set a hearing date and the application will proceed in the same way as the 'Standard procedure' above.

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