

Giving your landlord a Breach of Duty Notice

If your landlord fails to carry out their duties under the *Residential Tenancies Act 1997*, you can give them a Breach of Duty Notice. This notice tells the landlord that they are required to fix the problem or pay you compensation for any loss you have suffered because of their breach of duty (or both).

When can you serve a Breach of Duty Notice?

Your landlord has breached a duty when they have failed to:

- > provide vacant and clean premises
- > allow you 'quiet enjoyment' of the premises (see the **Privacy** fact sheet for more information)
- > maintain the premises in good repair
- > make sure that replacement water appliances or fittings have at least an A rating
- > provide locks on all external doors and windows
- > provide keys if locks are changed

If you want the landlord to fix the breach, you will need to give them a Breach of Duty Notice. For example, you can give your landlord a Breach of Duty Notice if they are disturbing your 'quiet enjoyment' by turning up at your home without notice.

➔ Note: the reasons for which rooming house and caravan park residents can give Breach of Duty Notices are different. Contact the Tenants Union for more information.

Getting the landlord to comply

A Breach of Duty notice informs the landlord that if they don't fix the breach and/or pay you compensation, you may apply to the Victorian Civil and Administrative Tribunal for an order that they do so. (See the **Victorian Civil and Administrative Tribunal** fact sheet for more information.)

➔ It is an offence to fail to follow a Tribunal order, and this applies to both monetary and non-monetary orders. See the **Complaints about landlords and real estate agents** fact sheets for more information.

Claiming compensation

If your landlord has breached any of their duties and you have suffered loss or substantial inconvenience as a result, you can claim compensation by serving a Breach of Duty Notice.

If the breach has just occurred, you should serve a Breach of Duty Notice to get the landlord to comply with their duty (as described on the left), and apply to the Tribunal for compensation once the breach has been fixed. This is because you cannot fully calculate the loss you have suffered until the problem is fixed.

If the breach occurred some time ago and has already been fixed, you can still use a Breach of Duty Notice to claim compensation. On the form, include the amount that you are claiming, which duty was breached and the date that you first contacted your landlord about the breach.

If you have already moved out, you don't need to serve a Breach of Duty Notice. You can make your compensation claim by applying directly to the Tribunal.

➔ In some circumstances, serving a Breach of Duty Notice can be the first step in the process of ending your tenancy (see the **Ending a tenancy** fact sheet for more information).

How to fill out a Breach of Duty Notice

Write the information in the boxes provided on the notice. Listed below are hints on how to complete the form.

1. Make sure you provide the landlord's name (not the name of the agent).
2. Provide the address of the landlord or agent (not your address).
3. If there is more than one person on the tenancy agreement, you should name everyone on the agreement.
4. Provide the address of the rented premises.

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5. Provide the address that you want the documents to be sent to (which may differ from the address you provided in section 4).
6. Provide contact telephone numbers.
7. Specify how the notice was served (eg by registered mail) and the date it was served.
8. Sign the form.
9. Clearly print your name.
10. State the reason you are sending the form by identifying the duty that your landlord has breached eg Section 65 – Not suitable for occupation (see the full list on the inside page of the Breach of Duty Notice). You should then add as much detail as possible including dates. If there is not enough space write 'see attached' and provide the details on a separate sheet of paper.
11. Provide details of the loss or inconvenience you have suffered as a result of the landlord's breach. Provide as much detail as possible. If you are claiming compensation, attach any quotes for repairs or replacement of damaged goods, receipts for expenses etc. You can write 'see attached' in the box and provide the details on a separate sheet.
12. If you are trying to get the landlord to carry out their duties you should state what it is that you want them to do (eg fix the leaking roof). If you are claiming compensation, fill in the amount that you are claiming. You can use Section 12 for both compliance and compensation (cross out 'or' and write 'and').
13. This is a statement that informs the landlord that you will apply to the Tribunal if they do not fix the problem and/or pay you compensation.
14. Tick the box to indicate whether or not you have attached any documents to the form.

How to serve a Breach of Duty Notice

Breach of Duty Notices are available from the Tenants Union or Consumer Affairs Victoria. You can download the notice from the Consumer Affairs website at www.consumer.vic.gov.au. You can send the notice by regular mail but we recommend that you use registered mail or deliver it in person so that you can prove that they received it. Keep your copies of the notice and the mail receipts.

Once you have served the notice, you must wait 14 days (allow an extra 2 days for delivery by mail). Then if the landlord hasn't fixed the problem and/or paid you compensation, you can apply to the Victorian Civil and Administrative Tribunal for an order that they comply with the notice.

To apply to the Tribunal, you will need to complete an application form and attach a copy of the Breach of Duty Notice. See the ***Victorian Civil and Administrative Tribunal*** fact sheet for more information.

➔ If your landlord gives you a Breach of Duty Notice, see our fact sheet ***When you get a Breach of Duty Notice*** or contact the Tenants Union for advice.

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