

tenant's handbook



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Tenant's Handbook

a guide for Victorian residential tenants

Tenant's Handbook

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Disclaimer

Information is correct at the time of printing but is subject to change. Please check details with the Tenants Union of Victoria. This booklet is a guide only and should not be used as a substitute for the *Residential Tenancies Act 1997* or professional legal advice.

Introduction

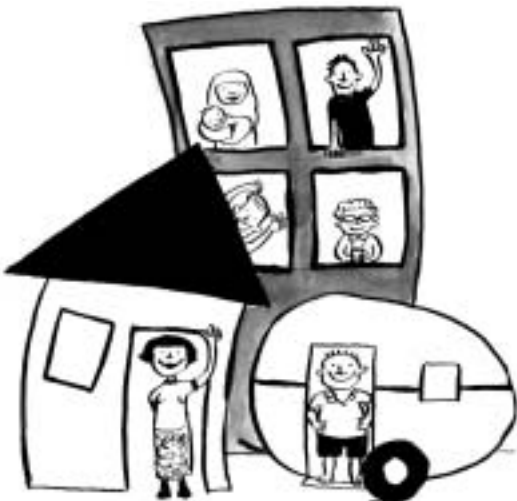
The Tenants Union of Victoria has written this guide for residential tenants – those who rent from a private landlord (or estate agent) or the Office of Housing.

It explains the rights of residential tenants and gives advice on protecting these rights. It does not cover every aspect of the law and you should contact the Tenants Union if you have a question that isn't covered here.

The Tenants Union provides free confidential advice and a legal service for public and private residential tenants in Victoria.

Tenants Union services include:

- > telephone/in-person/email advice
- > representing tenants at the Victorian Civil and Administrative Tribunal (VCAT)
- > help with applying for public housing/
bond loan scheme
- > referrals to other services



How to contact the Tenants Union

Telephone advice line

☎ 9416 2577

Public tenants advice line

☎ 1800 068 860 (freecall)

Translating and Interpreting Service (TIS)

☎ 131 450

National Relay Service (TTY)

☎ 133 677

Email advice: advice@tuv.org.au

The Tenants Union has a number of offices around Melbourne. For information on office locations and hours, please phone our advice line (see above) or visit our website at www.tuv.org.au.

Tenants Union Rooming House and Caravan Park Service

☎ 9411 1444

55 Johnston Street Fitzroy

Tenancy agreement (lease)

What is a lease?

A lease is a legal agreement by which one person (the tenant) rents their home from the owner of the premises (the landlord).



Fixed-term & periodic tenancies

There are two types of tenancy agreements. The first type runs for a set period of time (usually 6 or 12 months). This is called a 'fixed-term' agreement or tenancy. The second type runs from week to week, or month to month. This type of lease is called a 'periodic' agreement or tenancy.

A fixed-term tenancy can become a periodic tenancy. For example, you could sign a 12-month lease with your landlord but remain in the premises beyond the 12 months. Unless a new lease is signed, the tenancy automatically becomes periodic.

The same rights and responsibilities apply, except that different rules apply when it comes to ending a tenancy (see 'Ending a tenancy' on page 18). As a rule, it is harder for your landlord

to evict you if you have a fixed-term lease. However, it can be costly if you wish to move out before the end of the fixed term (see 'Breaking your lease' for more information on page 20).

Entering into a fixed-term lease

tip> Do not sign a fixed-term lease that allows for rent increases during the fixed term. (See 'Rent increases' for more information on page 15.)

A landlord (or their agent) must give you a copy of the lease and any other documents that form part of the lease (eg body corporate rules) before you are asked to sign. The lease must be in the standard form. If necessary, seek advice from the Tenants Union before you sign, especially if there are 'additional terms' attached.

Once signed, your landlord or agent must give you a copy of the lease and any other relevant documents within 14 days. Keep your signed copy of the lease and any other relevant documents in a safe place.

tip> Do a thorough inspection and make sure you are happy with the property before you pay your landlord any rent or bond money.

Other documents & information

At the beginning of a tenancy, your landlord must give you:

- > *Renting a Home: a guide for tenants and landlords* (red booklet from Consumer Affairs Victoria)
- > 2 copies of a Condition Report (if you have paid a bond), completed and signed by your landlord or agent
- > your landlord or agent's full name, address, and telephone and fax numbers

> a statement setting out the agent's power to authorise urgent repairs (if your landlord has an agent), the maximum amount of urgent repairs they can authorise, and the agent's telephone or fax number for urgent repairs

It is an offence for your landlord or agent not to provide you with the above information. (See 'Complaints about landlords and estate agents' on page 39.)

Condition report

The Condition Report is a checklist that acts as proof of the state of the property (both inside and out) when you moved in. If you pay a bond, you must be given 2 signed copies of the Condition Report before you move in.

The Condition Report will be used as evidence about the state of the property at the end of your tenancy, so it is very important that you make a note on both copies of the Condition Report of any disagreements you have with your landlord's or agent's assessment of the property.

When complete, sign and return one copy to your landlord or agent within 3 business days and make sure you keep the other copy and any other documents relating to your tenancy in a safe place.

At the end of your tenancy, the Condition Report will help determine if there is damage or cleaning costs for which you are responsible.



Bond

A bond (sometimes called a 'security deposit') is an amount of money paid by tenants at the start of a tenancy in case they damage the property or fail to pay their rent.

If your rent is \$350 per week or less, you cannot be asked for more than one month's rent as bond. If your rent is over \$350 per week, or the lease states that the premises are your landlord's 'principal place of residence' and that they intend to move back in when the lease is up, there is no maximum bond limit.

Bond lodgement form

When you pay your bond, you and your landlord or agent must sign a Bond Lodgement Form. Your landlord or agent should give you this form. If not, the form is available from the Tenants Union or Consumer Affairs Victoria.

Once you have paid the bond, your landlord or agent must lodge your bond money and the Bond Lodgement Form with the Residential Tenancies Bond Authority within 10 business days. Within 14 days, you should receive notification from the Authority that your landlord or agent has lodged your bond; if not, contact the Authority on ☎ 1300 137 164 (local call cost). The bond is held by the Authority until the end of the tenancy.

Bond loan scheme

If you can't afford the bond, the Office of Housing may be able to help. Contact your local Office of Housing for more information.

First month's rent

If your rent is \$350 per week or less, you cannot be asked for more than one month's rent in advance. If your rent is over \$350 per week, there is no rent in advance limit. If your rent is to

be paid weekly, you cannot be asked to pay more than 2 weeks rent in advance.

If you pay your rent in person, you must be given a receipt immediately. If you send the money by mail and request a receipt, you must be given one within 5 days. Even if you don't request a receipt, you can request a statement within 12 months from the date of payment. Keep all your rent receipts in a safe place.

Utility & telephone connections

Services to your home such as electricity, gas, oil, water and sewerage are called 'utility' services. When you move into a rented home, it is your responsibility to have the utility services reconnected in your name. You should give the utility providers 48 hours notice so they can arrange for the utility to be turned on and the meter read. (See 'Utility charges' for more information on page 16.)

Utility connections

Initial connection fees are charged when a service is connected to a property for the first time. Tenants are not responsible for the initial connection fees for electricity, water, gas or oil services. These are the responsibility of your landlord. If your landlord tries to pass on these charges to you, you should not pay them.

If you have already paid the connection fees, your landlord must repay the money to you. Contact the Tenants Union for advice.

Telephone connections

Tenants are responsible for all charges related to the supply and use of a telephone at the rented premises. This includes all service fees, call charges, equipment rental charges and connection fees. It also includes the cost of the initial connection of a telephone line.

During a tenancy

Maintenance & repairs

Your landlord must ensure that the rental property is in a reasonably clean condition at the start of your tenancy. They must also maintain the property in good repair throughout your tenancy.

The *Residential Tenancies Act 1997* divides repairs into urgent and general categories. In each case there is a different procedure to follow.



Urgent repairs

Urgent repairs are defined by the RTA as:

- > a burst water service
- > a blocked or broken toilet
- > a serious roof leak
- > a gas leak
- > a dangerous electrical fault
- > flooding or serious flood damage
- > serious storm or fire damage

- > a failure or breakdown of any essential service or appliance provided for hot water, water, hot cooking, heating or doing laundry
- > a failure or breakdown of the gas, electricity or water supply
- > a failure or breakdown in any appliance or fitting supplied by the landlord that will result in a substantial amount of water being wasted
- > a serious fault in a lift or staircase
- > any fault or damage that makes the premises unsafe or not secure

You must take reasonable steps to inform your landlord or agent of the need for urgent repairs and give them a chance to carry out the repairs before you make any arrangements to have the repairs done yourself. Keep a record of what steps you took to get your landlord or agent to carry out the repairs (eg a list of phone calls with times and dates, or stamped fax originals).

Dealing with urgent repairs yourself

If you can't reach your landlord or agent or they fail to respond immediately, you can arrange to have the repairs done yourself, up to the cost of \$1000. Keep in mind that if you arrange for urgent repairs to be done and the cost is more than \$1000, your landlord only has to reimburse you \$1000.

Once the repairs are done, send your landlord a Notice to Landlord to inform them of the repairs and how much they cost (include copies of any relevant receipts or invoices, and keep your copy). The form is available from the Tenants Union or Consumer Affairs Victoria. Your landlord must repay you within 14 days of receiving the form. If they don't, contact the Tenants Union for advice.

tip> Never withhold rent from the landlord or use your rent money to pay for repairs. If you get 14 days behind in your rent, the landlord can serve you with a 14-day Notice to Vacate.

Taking urgent repairs to the Tribunal

If you can't afford to pay for repairs or if the repairs will cost more than \$1000, you can apply to the Tribunal for an order that your landlord carry out the urgent repairs. The Tribunal must hear your application for urgent repairs within 2 business days. (See 'The Tribunal' for more information on page 37.)

General repairs

If the repairs do not come under the definition of 'urgent' on page 8, they are general repairs. You shouldn't deal with them yourself unless your landlord has given you written consent and agreed to pay all costs.

If your property needs any general repairs, send your landlord a Notice to Landlord listing all the repairs on the form. This gives the landlord notice that they have 14 days to carry out the repairs. The form is available from the Tenants Union or Consumer Affairs Victoria.

If you are a public tenant, your landlord is the Director of Housing and your Notice to Landlord should be delivered to your nearest Office of Housing Area Office.

If the landlord does not carry out the repairs within 14 days you can contact Consumer Affairs Victoria who will come and inspect the property and prepare a report. If the landlord still fails to do the repairs you can apply to the Tribunal. Contact the Tenants Union for more information.

tip> You may be entitled to claim compensation for any inconvenience, loss or damage to your personal property that results from your landlord's failure to maintain the premises in good repair. (See 'Compensation & Compliance' for more information on page 33.)

Damage caused by the tenant or their visitor

If you or one of your visitors damages the premises, you may have to arrange to pay for the repairs to be done and you may have to organise them yourself. If you don't, your landlord or agent can serve you with a Notice requiring you to carry out the repairs within 14 days. If you don't act on this notice, they can arrange for the repairs to be done and send you a further notice requiring you to pay for the repairs. If you receive such a Notice, contact the Tenants Union for advice.

If your landlord is seeking reimbursement for repairs and you do not pay them, your landlord or agent can apply to the Tribunal for an order that you pay. At the Tribunal, your landlord must prove that you caused the damage and that the cost of the repairs was fair and reasonable. You do not have to pay for the cost of the repairs until your landlord is granted such an order.

If you dispute your landlord's claim that you or a visitor of yours caused the damage, **you must attend the Tribunal hearing** to defend the claim. (See 'The Tribunal' for more information on page 37.)

Privacy

Although you have a right to 'quiet enjoyment' of your rented home, you also have a responsibility to allow your landlord, or anyone acting on their behalf (eg agents, tradespeople), entry to your home if:

- > they have a lawful reason for entry, and
- > they give you proper notice of their intention to enter, and
- > they only visit during times set down in the RTA

If they have met these requirements, you must permit entry, even if the timing of their visit doesn't suit you (which is not to say that you can't try to negotiate a more convenient time).

However, your landlord or any person acting on their behalf must behave in a reasonable manner upon entry, and they must leave as soon as they have finished what they set out to achieve.

If they have not met these requirements, or they have been making frequent or harassing visits, do not try to protect your privacy by changing the locks. You can apply to the Tribunal for a Restraining Order or a Compliance Order.

If your property is damaged during your landlord's entry, you may be entitled to claim compensation. (See 'Compensation & Compliance' on page 33.)

Landlord's reasons for entry

Your landlord (or someone acting on their behalf) has a lawful reason to enter your home if:

- > a Notice to Vacate or a Notice of Intention to Vacate has been given and will expire in less than 14 days, and they want to show the premises to a prospective tenant
- > the premises are to be sold or used as security for a loan and they want to show the premises to a prospective buyer or lender
- > they need to enter to carry out a duty under the lease, the RTA or another law
- > they are having the property valued
- > they have reasonable grounds to believe that you have failed to meet your duties under the lease or RTA
- > they want to inspect the premises, the first 3 months of the tenancy have passed and an inspection has not been made within the last 6 months
- > you have agreed to the entry within the last 7 days

Landlord's Notice of Intention to Enter

Even if your landlord (or someone acting on their behalf) has a lawful reason for entry, they must:

- > give you at least 24 hours written notice of their intention to enter, stating the reason they want to enter and time they intend to visit
- > deliver the notice by mail or give it to you in person between the hours of 8am and 6pm (if the notice is delivered by mail, they must allow an extra 2 days for delivery)
- > only visit between the hours of 8am and 6pm, and not on public holidays (unless you have agreed otherwise within the last 7 days)

When your landlord is selling

Showing prospective buyers through the premises

Your landlord has a right to show the property to prospective buyers, but this right must be balanced against your right to privacy.

It may be possible to negotiate an agreement with your landlord or agent that strikes a balance between your right to quiet enjoyment and their right to inspect. Any such agreement should be in writing and signed by you and your landlord or agent.

An agreement can include conditions such as:

- > your landlord or agent will only visit if they have made a convenient appointment time with you
- > you will have the property open for inspection for an agreed time each week
- > your landlord will reduce your rent as compensation for your inconvenience

If your landlord does not agree to a rent reduction, you may be able to apply for compensation at a later date. For a successful

compensation claim you would need to prove that the interference with your quiet enjoyment was significant.

(See Compensation & Compliance for more information on page 33.)

If your landlord or agent's inspections are unreasonable, you can apply to the Tribunal for a Restraining Order.

Rent arrears

If you do not pay your rent on the day that it is due, you will be 'in arrears'. If you are unable to make a payment, contact your landlord or agent as soon as possible and tell them when you will be paying.

If you are unable to repay the arrears in one payment, you should offer to pay off the arrears over a period of time (eg an extra \$20 per week). Do not offer to repay more than you can afford. You should make the offer in writing and keep a copy. If your landlord or agent rejects your offer, you can use the letter at any later Tribunal hearing as proof that you tried to resolve the problem.

If your landlord or agent rejects your offer (or you are unable to make repayments) and you are 14 days or more in arrears, they may act to have you evicted. Before you can be evicted, they must give you a 14-day Notice to Vacate and apply to the Tribunal for a Possession Order. (See 14-day Notice to Vacate on page 24 for more information.)

Be aware that it is illegal for you to refuse to pay your rent on the grounds that your bond can be used as rent.

Rent increases

Rent increase notices

You cannot be given a rent increase more than once every 6 months.

The landlord must give you 60 days written notice of any rent increase. If the notice is sent by mail, they must allow an extra 2 business days for delivery.

The notice can refer to only one rent increase and must advise you that you have 30 days to apply to Consumer Affairs Victoria to have them investigate the proposed increase. If the notice does not comply with these conditions, it is invalid and you do not have to pay the increase.

If you have a fixed-term lease you cannot be given a new increase unless there is a specific term in your lease allowing for a rent increase.

If you think there might be a problem with a notice of rent increase that you have received contact the Tenants Union for advice.

Objecting to rent increases

If you think the proposed rent is too high, you may request that an inspector from Consumer Affairs Victoria inspect your home to determine whether the increase is reasonable. You must make the request within 30 days of receiving the rent increase notice.

When the inspector has completed their inspection, they will provide you with a report. Once you have this report you can apply to the Tribunal for a determination that the proposed rent is excessive. You must make this application within 30 days of receiving the inspector's report. If the Tribunal finds the proposed rent excessive, it can order that the rent not be increased, or that it be increased by a lesser amount. It can also set a period of time during which your landlord cannot increase the rent.

If the rent increase comes into effect before your case is heard at the Tribunal, you should pay the increased rent until the Tribunal has made a decision. If your application is successful, the Tribunal can order that you be reimbursed any increased rent that you have already paid.



Reduction in services or facilities

If your landlord reduces or removes any services or facilities available with the property (eg your landlord takes over the garage), you can request that an inspector from Consumer Affairs Victoria inspects the property to determine if the rent is reasonable. Once you have this report, you may apply to the Tribunal for an order that the rent be reduced. The Tribunal will only set a new rent if the rent is significantly more than that payable for rented premises with the same facilities in the same area.

Utility charges

Services to your home such as electricity, gas, oil, water and sewerage are called 'utility' services. Responsibility for the payment of utility charges depends upon whether or not the property is separately metered.

Separately metered property

Separately metered properties have meters that measure the amount of any utility service used by that property and no other. If your property is separately metered, you are responsible for paying the following charges:

- > all charges for the supply or use of electricity, gas or oil (including supply and reconnection fees)
- > all charges for the amount of water used
- > all charges for sewerage disposal
- > all charges for the use of bottled gas (except for the supply or hire of gas bottles)

Property not separately metered

If the property is not separately metered, the meter measures the amount of electricity, gas, oil or water used by that property and any number of other properties. For example, some blocks of flats have meters that measure the whole block's water usage, rather than the usage of individual flats. If you are not sure whether the property is separately metered, contact the relevant utility supply company.

If the property is not separately metered, your landlord is responsible for the payment of utility charges, unless your landlord is the Office of Housing and it is not practical for them to instal separate meters (eg in high-rise flats). In this case, the Office of Housing can charge you a 'service fee' for your gas, electricity, water and heating usage. This service fee can include your use of any laundry facilities supplied by the Office of Housing.

Ending a tenancy

Ending a periodic tenancy

In most cases, you must give your landlord 28 days written notice if you intend to end a periodic tenancy.

Notice of Intention to Vacate

To give formal Notice of Intention to Vacate, you can write a letter to the landlord. In the letter, state the date you intend to move out and sign it.

An alternative to writing to your landlord is to fill out a Notice to Landlord. This form is available from Consumer Affairs Victoria or the Tenants Union.

You can deliver the notice in person or send it by registered or certified mail (keep a copy of the notice and your mail receipt). If you send the notice by registered or certified mail, allow an extra 2 business days for delivery.

tip> Return the keys on the day you move out: as long as you have the keys you can be charged rent.

14-day Notice of Intention to Vacate

In some circumstances you can give your landlord a 14-day Notice of Intention to Vacate. These are when:

- > your landlord has given you a 60, 90 or 120-day Notice to Vacate
- > you have a written offer of public housing
- > you require special or personal care (eg you need to move into a nursing home)
- > you are going into temporary emergency accommodation

Note that you can only give one of these notices when you are on a periodic lease or at the end of your fixed-term.

Moving out before the notice period is up

You can move out before the 14 or 28 days are up (whichever is the case), but you should tell your landlord and return the keys so the property can be relet. If your landlord finds tenants to move in before the 14 or 28 days have passed, you will not be responsible for the rent after they move in.

Ending a fixed-term tenancy

To end a fixed-term tenancy you can:

- > serve an immediate Notice of Intention to Vacate
- > let your tenancy run its course
- > break your lease
- > give your landlord a 14-day Notice of Intention to Vacate if they have failed to comply with an order of the Tribunal
- > give your landlord a 14-day Notice of Intention to Vacate if they have breached a duty under the RTA on successive occasions
- > apply to the Tribunal to end the tenancy on the grounds of hardship, or
- > 'assign' or 'sub-let' your lease to another tenant

The following sections explain each of these options and their pros and cons.



Serving an immediate Notice of Intention to Vacate

If the property is unfit for human habitation or has been damaged to such an extent as to be unsafe, you can serve your landlord with an immediate Notice of Intention to Vacate. If the property is uninhabitable before you move in, you can serve your landlord with a Notice of Termination.

If your landlord disputes your claim that the premises are unfit for human habitation, you will need to prove your claim at the Tribunal and this can be difficult. If this is your situation, contact the Tenants Union for advice.

Letting your tenancy run its course

You can end your fixed-term tenancy by letting it run its course and moving out on the last day of the fixed-term. This is the easiest and cheapest way to end your fixed-term tenancy.

In most cases, you still need to give your landlord 28 days written notice if you intend to end your tenancy on the same day that your fixed-term agreement ends.

Breaking your lease

If your lease has some time to run and you are in a hurry to move out, breaking your lease may be the best option if you can afford the lease breaking costs.

The costs you could be liable for include:

- > a reletting fee (usually 1 or 2 weeks rent on a pro rata basis) if the property is let by an agent and the agent charges your landlord a reletting fee for finding new tenants
- > advertising costs
- > rent for a reasonable period until new tenants move in, or until the end of the fixed-term lease (whichever happens first)

You should give as much written notice as possible (keep a copy of your letter), specifying the date you intend to vacate and asking your landlord (or their agent) to find a new tenant. Your landlord must take all reasonable steps to find a new tenant as soon as possible. If they do anything that makes it more difficult to find a new tenant (eg by putting up the rent) they are failing to mitigate their loss. This could impact on the amount of lease break costs that you have to pay.

You should only pay rent up to the day you vacate. Your landlord is more likely to make an effort to find new tenants if they won't have any rent coming in after that date. If your landlord makes a compensation claim for lost rent, it can only be for the period between the date you moved out and the date the new tenants moved in.

If you think your landlord's compensation claim is unreasonable, don't pay. They will have to apply to the Tribunal and at the Tribunal hearing you will have a chance to give your side of the story. (See 'Disputing the claim' for more information on page 36.)

14-day Notices of Intention to Vacate for landlord's failure to comply with a compliance order

If your lease has some time to run and your landlord has failed to live up to one or more of their responsibilities under the RTA or your tenancy agreement, you may be able to serve your landlord with a 14-day Notice of Intention to Vacate if you have first given them a Breach of Duty Notice and applied to the Tribunal for a compliance order.

A Breach of Duty Notice asks your landlord to fix a problem or if appropriate, pay compensation within 14 days. (See Breach of Duty Notices for more information on page 33.)

If your landlord fails to fix the problem or pay compensation within 14 days, you can then

apply to the Tribunal for a Compliance Order. If the Tribunal makes a Compliance Order and your landlord fails to comply with it, you can give them a 14-day Notice of Intention to Vacate.

14-day Notice of Intention to Vacate for successive breaches

You can also give your landlord a 14-day Notice of Intention to Vacate at any time during a fixed-term tenancy for successive breaches of any of their duties under the RTA if:

- > they have breached the same duty twice before, and
- > you have given them a Breach of Duty Notice on both previous occasions, and
- > they remedied the breach or paid you compensation on both previous occasions

Hardship

If the continuation of the fixed-term tenancy will cause you severe hardship, you can apply to the Tribunal for an order that the term of your agreement be reduced. You should ask the Tribunal to hear the case as quickly as possible. You will have to prove to the Tribunal that:

- > there has been an unforeseen change in your circumstances (eg you have lost your job)
- > you will suffer severe hardship if the agreement continues
- > the hardship you will suffer if the agreement is not ended will be greater than your landlord's hardship if the agreement is ended

The Tribunal can order that you pay compensation to your landlord for any loss caused by the fixed-term lease ending early. This often makes a hardship application of no practical advantage, as your landlord often recovers the same amount in compensation as they would have received if you simply broke the lease.

Assignment & sub-letting

You may be encouraged to assign your tenancy agreement to another tenant or to sub-let the property. This is not always a straightforward option and you should seek advice before doing so.

Notices to Vacate

If your landlord wants to end your tenancy, they must give you a valid Notice to Vacate (see pages 23-26). A Notice to Vacate by itself does not allow your landlord to evict you. To have you evicted, your landlord must apply to the Tribunal for a Possession Order.

A Notice to Vacate must be:

- > given to you in person, or
- > sent by certified or registered mail

The notice must be in writing and signed and dated by your landlord or agent. It must specify the reason you are being asked to leave (unless it is a 60 or 90-day notice to end a fixed-term tenancy or a 120-day no-reason notice to end a periodic tenancy). If the notice is sent by mail, the date on the notice must include an extra 2 days to allow for delivery.

If you receive a Notice to Vacate and you are not sure whether or not it is valid, check with the Tenants Union.

Immediate Notice to Vacate

The landlord can give you an immediate Notice to Vacate if the rented property is destroyed or unfit for human habitation. The landlord can also give you an immediate Notice to Vacate if you (or any of your visitors):

- > maliciously damage the premises; 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

The landlord can give you a 14-day Notice to Vacate if:

- > your rent is 14 days in arrears
- > you failed to pay your bond
- > you assigned or sub-let the premises without your landlord's consent
- > your lease has a condition prohibiting children living on the premises, and you are breaking that condition
- > you used your home (or allowed other people to use your home) for an illegal purpose
- > you are a public tenant and you made a false or misleading statement on your application form
- > you failed to comply with a Compliance Order made by the Tribunal
- > you breached any of your responsibilities under the RTA on 3 occasions (provided it was the same breach each time and you were given Breach of Duty notices)
- > the property was your landlord's principal place of residence immediately before you signed the tenancy agreement (and this is stated on your tenancy agreement), there have been no more than 2 leases since it was the landlord's main residence and they intend to move back in when your fixed-term lease expires

60-day Notice to Vacate – periodic tenancy

If you have a periodic tenancy, your landlord can give you a 60-day Notice to Vacate if immediately after the date on the notice the property is to be:

- > demolished
- > used for a business or any other purpose, except being rented as a residence
- > occupied by your landlord, or by your landlord's spouse, son, daughter, parent or spouse's parent, or by someone who normally lives with your landlord and is dependent on your landlord
- > sold with 'vacant possession' (a guarantee that the property will be vacant on completion of the sale)
- > repaired, renovated or reconstructed, and this can't be done without it being vacant
- > used for public purposes if it is public property

If your landlord serves a notice for any of the first 4 reasons above, they can't relet the property again for 6 months after you leave.

If you want to challenge the notice, you can apply to the Tribunal within 30 days of receiving the notice.

tip> If you have a fixed term tenancy you cannot be asked to move out for one of these reasons before the end of your fixed term.

If you have a periodic tenancy and you receive a 60-day Notice to Vacate, you can give your landlord a 14-day Notice of Intention to Vacate if you wish to leave before the 60 days are up. (See Ending a periodic tenancy for more information on page 18.)

60-day Notice to Vacate – fixed-term tenancy

Your landlord can also serve a 60-day Notice to Vacate if you have a fixed-term agreement for less than 6 months. The end date on the notice must be on the last day of the fixed-term.

90-day Notice to Vacate – fixed-term tenancy

Your landlord can serve a 90-day Notice to Vacate when you have a fixed-term lease for 6 months or more. The end date on the notice must be on the last day of your fixed term.

120-day Notice to Vacate

If you have a periodic tenancy (eg month-to-month), your landlord can give you a 120-day Notice to Vacate for no reason.

Notice given in retaliation

If you are given a notice to vacate (end of fixed term) or a no reason notice to vacate in retaliation for you exercising your rights (eg asking for repairs), it may be invalid. If you believe this is the case, contact the Tenants Union. If you want to challenge the notice at the Tribunal, you must apply within 21 (60 day notice), 28 (90 day notice) or 60 days (120 day notice) of receiving the notice.

Eviction

In order to have you evicted, your landlord must:

- > give you a valid Notice to Vacate
- > apply to the Tribunal for a Possession Order

Your landlord has 2 ways in which to apply for a Possession Order—the *standard procedure* and the *alternative procedure*.

According to the standard procedure, your landlord applies for a Possession Order and the Tribunal sends you a Notice of Hearing, which tells you the date, time and place of the hearing. At the hearing you have a chance to explain your circumstances.

If your landlord has given you a Notice to Vacate for rent arrears or because you have a fixed-term lease that is due to expire, they can use the alternative procedure. The alternative procedure allows the Principal Registrar of the Tribunal to grant a Possession Order without a Tribunal hearing and without you having a chance to give your side of the story. There will only be a hearing if you lodge a Notice of Objection to your landlord's application. If you receive a notice to vacate under the alternative procedure you should contact the Tenants Union for advice as quickly as possible as strict time limits apply.

Tribunal hearings for rent arrears

At the hearing, the Tribunal may grant the Possession Order, or it may order that you can stay in the property but must repay the arrears if:

- > it is satisfied that you couldn't have avoided falling into arrears, and
- > you intend to repay the arrears, and
- > you can afford to pay the rent in the future

For information on how to avoid eviction for rent arrears, contact the Tenants Union.

Review hearings & eviction

If you find out that a Possession Order has been granted, but you did not attend the hearing, you can apply to the Tribunal for a review of the order. You will need to do this before the police evict you. Once you have been evicted, the Tribunal has no power to get you back into the property. If possible, you should apply for an urgent rehearing by going to the Tribunal in

person. If you live in the country or are unable to go to the Tribunal, you should ring the Tribunal registry and ask them to tell you how to apply for a review, or contact the Tenants Union for advice.

The Victorian Civil and Administrative Tribunal is at:

5th floor, 55 King St, Melbourne

☎ (03) 9628 9800, freecall ☎ 1800 133 055

fax (03) 9628 9822

Open 9.00am to 4.30pm Monday to Friday

When you apply for a review you should make sure the Tribunal contacts the police to stop them carrying out the eviction before your rehearing takes place.

When your application for a review is heard you will need to convince the Tribunal member that you had a good reason for not appearing at the original hearing. If the Tribunal member accepts your explanation, the initial decision will be set aside and your landlord's application reheard. There is no fee for making an application for a rehearing.

If you miss your review hearing, you will only be able to make a second review application with the leave of the Tribunal.

Illegal evictions

It is illegal for a landlord or agent, or anyone acting on their behalf to attempt to physically evict you or change the locks. Only the police can carry out an eviction. If your landlord or agent attempts to evict you, you should call the police.

If you have been illegally evicted, you should immediately apply (in person if possible) for an urgent hearing at the Tribunal. The Tribunal can restrain your landlord or agent from further illegal actions, and order them to allow you back into the property.

You should also lodge a complaint with the Director of Consumer Affairs Victoria. There is a maximum penalty of \$2000 if your landlord is convicted. You can also seek compensation for any inconvenience, costs, loss or damage to your goods caused by an illegal eviction. (See Complaints about Landlords & Real Estate Agents on page 39 and Compensation & Compliance for more information on page 33.)

Moving out

When does the tenancy end?

Whether it's fixed-term or periodic, your tenancy ends when you move out of the property and return the keys. Return the keys on the day that you leave, or you may be considered to be still in possession of the property and held responsible for rent.



Condition of the property

When you move out, you must leave the property in the same condition it was in when you moved in, except for fair wear and tear.

You must also leave the property in a reasonably clean condition. This doesn't necessarily mean that you must steam clean the carpets. What is considered 'reasonably clean' can also depend on what state it was in when you moved in.

If you filled out a Condition Report at the start of the tenancy, you should fill out the section about the condition of the property when you move out and try to get your landlord or agent to sign it.

If possible, take photographs of the property after you have cleaned it, and have a friend come through the property. If necessary they can give evidence about the state of the property when you moved out.

tip> If you do pay for steam cleaning or any other cleaning service, make sure you keep the receipt. If the landlord or real estate agent asks for the receipt give them a copy.

Getting your bond back

At the end of the tenancy, you and your landlord or agent can agree on how the bond will be distributed. You can agree that the bond be returned to you in full, or that part or all of the bond be paid to your landlord.

Bond Claim form

If you reach an agreement, you and your landlord or agent must sign a Bond Claim form. Your landlord or agent should give you this form. If not, the form is available from Consumer Affairs Victoria or the Tenants Union.

The signed Bond Claim form should be sent to the Residential Tenancies Bond Authority. The Authority will then pay out the bond according to the form. Your bond refund will go directly into the bank account you nominate, usually by the next business day after receiving the form.

Never sign a blank Bond Claim form. It's like giving your landlord or agent a blank cheque! Make sure you fill out the amount each party is to receive.

If the bond was paid on your behalf by the Office of Housing, you cannot agree to pay some or all of it to your landlord. If your landlord wants to claim against your bond, they must

apply to the Tribunal within 10 business days of the end of your tenancy and name the Office of Housing as a party to their application.

When there is a dispute about the bond

If you and your landlord cannot agree about how the bond should be paid out, one of you can apply to the Tribunal to have the matter settled.

If your landlord wants to apply to the Tribunal to claim all or part of your bond, they must do so within 10 business days of your tenancy ending. However, keep in mind that the Tribunal can grant your landlord permission to apply, even if they are out of time.

If your landlord has not applied to the Tribunal within 10 business days of your tenancy ending, you should apply to the Tribunal for an order that the Authority pay you the full amount of your bond. Your landlord can still claim for compensation, but they won't have access to your bond as security.



Bonds & abandoned premises

If you leave the property without giving your landlord notice and without giving a forwarding address, and you owe your landlord rent, they can apply to the Principal Registrar of the Tribunal for an order that they be paid some or all of your bond. If the Principal Registrar is convinced you have abandoned the premises,

that you cannot be found and that you owe your landlord rent, they can make an order that your landlord be paid your bond without having to go to a hearing.

If the Principal Registrar has made such an order, you must act quickly if you wish to challenge the order. You should contact the Tenants Union for further assistance.

Utilities & mail

Before you move out, you should arrange to have the gas, electricity, water and telephone disconnected on the day you vacate. You should give the utility suppliers 48 hours notice so they can arrange for a final meter reading and disconnection. If you don't disconnect the utilities, you could end up having to pay the next tenant's bill.

You should also have your mail redirected, which is done by filling out a form at any post office and you should leave a forwarding address with your landlord.

If you do not leave a forwarding address you will not know if your landlord has made an application for your bond or compensation and you might miss out on the opportunity to put your case.

Compensation & compliance

If your landlord fails to live up to their responsibilities under the RTA or your lease, you can serve them with a Breach of Duty Notice. A Breach of Duty Notice gives your landlord 14 days to comply with their responsibilities and/or pay you compensation if you have suffered a loss or inconvenience. If they fail to comply or pay you compensation, you can apply to the Tribunal to resolve the matter. (See Breach of Duty Notices below for more information.)

Your landlord can also give you a Breach of Duty Notice if you fail to live up to your responsibilities. However, if they claim that you have failed to live up to a responsibility under your lease rather than the RTA (eg your lease has a 'no pets' clause and you buy a dog), they can apply directly to the Tribunal without first serving you with a Breach of Duty Notice.

Tenant compensation claims

Breach of Duty Notice

A Breach of Duty Notice gives your landlord 14 days to comply with their responsibilities under the RTA and/or pay you compensation if you have suffered a loss or inconvenience. Breach of Duty Notices are available from the Tenants Union or Consumer Affairs Victoria.

It is generally best to wait until the breach has been remedied (eg the repairs have been carried out) before you make a claim for compensation. When you fill out the Breach of Duty Notice, you must include:

- > details of your landlord's breach
(eg they have not maintained the premises in good repair)
- > details of the loss or damage caused

- > the amount of money you are claiming for anything that can't be fixed (eg damage done to your goods by water leaking through the roof)
- > the compensation you are claiming for any money you spent (eg the cost of cleaning clothes that became wet and dirty as a result of a roof leak) or inconvenience you experienced (eg staying at a friend's house while your bedroom was flooded)

If your landlord fails to pay you compensation or comply with your request that they remedy their breach within 14 days of receiving your notice, you can apply to the Tribunal. Don't forget to include 2 days for postage.

Fill in the Tribunal application form and attach a copy of your Breach of Duty Notice. (See Applications to the Tribunal for more information on page 37.) The Tribunal will send you a Notice of Hearing, which will tell you the date, time and place of the hearing.

If you have already vacated the premises, you do not need to serve your landlord with a Breach of Duty Notice in order to claim compensation. You can simply apply to the Tribunal. Include details of your loss and the amount that you are claiming on your Tribunal application.

Proving your claim at the Tribunal

At the Tribunal hearing, you must prove that you suffered a loss or inconvenience as a result of your landlord or agent's failure to meet their legal obligations under the RTA or your lease. You will also need to explain how you calculated any amount that you are claiming as compensation.

You should discuss your case with the Tenants Union before attending the Tribunal.

Landlord compensation claims

Your landlord can make a claim for compensation against you at any time during your tenancy, although most compensation claims by landlords are made after the tenancy has ended.

Often a claim is made against your bond at the same time. If your landlord is making a claim for an amount that is equal to or less than the amount of your bond, they do not have to make a compensation claim, but must follow the bond claim procedures. (See Getting your bond back for more information on page 30.)

You should be aware that your landlord can make a claim up to 6 years after the damage or loss has occurred.

Remember your landlord can apply directly to the Tribunal for compensation if you have already moved out, or if their claim involves a responsibility under your lease rather than under the RTA. If your landlord gives you a Breach of Duty Notice, it will include:

- > details of your breach
(eg you have broken a window)
- > what action you should take to fix the problem (eg replace the broken window)
- > the amount of money they are claiming for anything that can't be fixed
(eg 2 weeks unpaid rent as a result of you moving out without giving proper notice)

Agreeing to pay the claim

If you agree to pay your landlord's claim in full, in part or in instalments over time, make sure you get the agreement in writing and that it is signed by the landlord or their agent. Make sure you get receipts for any payments.

Disputing the claim

If you disagree with your landlord's claim, or you cannot reach an agreement with your landlord as to how much of the claim you should have to pay, they will have to apply to the Tribunal to resolve the matter. Your landlord must convince the Tribunal that:

- > they have sustained a loss or damage, and
- > the loss or damage resulted from your breach of the RTA or your lease, and
- > the amount they are claiming is reasonable

Contact the Tenants Union for advice on defending a compensation claim.

Compensation orders

If you have obtained an order from the Tribunal that your landlord pay you a sum of money, but you haven't been paid, there are a number of options open to you.

The best option depends on your landlord's financial circumstances. You should be aware that there are costs involved with each method and you should contact the Tenants Union or a Community Legal Centre for advice before proceeding.

If your landlord applies to the Tribunal for compensation and you are ordered to pay, your landlord can also take steps to enforce the financial order.

Consumer Affairs can prosecute landlords, agents and tenants for failing to comply with a Tribunal order, and this applies to both monetary and non-monetary orders. The maximum penalty is \$1000, plus \$200 a day until the order is complied with, up to \$2000.

The Tribunal

The Victorian Civil and Administrative Tribunal (Residential Tenancies List) settles disputes between tenants and landlords. It is not a court, but is able to make decisions or 'orders' that can be enforced by law. It is intended to be informal and cheap, and to resolve disputes quickly and fairly.

The Tribunal is located at 55 King St, Melbourne.

You can contact the Tribunal on:

☎ (03) 9628 9800, freecall ☎ 1800 133 055

fax (03) 9628 9822

The Tribunal also conducts hearings at other metropolitan and regional locations.

Please refer to the back of this booklet for all locations.

Applications to the Tribunal

If you cannot resolve a problem with your landlord or agent, you can apply to the Tribunal to make an independent decision. You will need to fill out an application form and send it to the Tribunal. This form is available from the Tribunal or the Tenants Union.

Make sure that when the form asks you to name your landlord (section 3), you give your landlord's name, not your real estate agent's name. If you are a public tenant, your landlord is the Director of Housing.

Once you have filled out the form, attach the application fee (\$32.50 at the time of printing). There is no application fee if you are applying for the return of your bond. The fee should be paid by postal order or cheque. If you want to pay cash, you must apply in person. If you cannot afford to pay the application fee, you can apply to have the fee waived by filling in a fee waiver form.

You must send a copy of your application to your landlord within 7 days (the green Respondent's copy). Send the copy by certified or registered mail (keep the mail receipt and your copy of the application, which is the yellow Applicant's copy). Allow 2 business days for delivery or deliver to the Tribunal Registrar in person.

Notice of Tribunal hearing

You will receive a notice from the Tribunal telling you when and where your hearing is to take place. Remember to read the notice carefully, as the hearing might not be in the city.

If you are unable to attend the Tribunal on the day of the hearing, you should request an adjournment (get advice from the Tenants Union). You must ask for an adjournment no less than 2 business days before the hearing.

If you need an interpreter, you should inform the Tribunal before the hearing date. The Tribunal should arrange a free interpreter for your hearing.

For advice on preparing a case for a Tribunal hearing, contact the Tenant's Union.

Tribunal review hearings

If you were unable to attend the hearing and there was a good reason why you didn't attend, or you didn't arrange to have someone represent you in your absence, you may be able to have the case reheard. You must apply within 14 days of receiving your copy of the Tribunal order. (If the Tribunal granted a Possession Order, see Review hearings & eviction for more information on page 27.)



Complaints about landlords and real estate agents

The *Residential Tenancies Act* specifies certain offences. If a landlord or agent commits an offence under the Act, they can be prosecuted in the Magistrates' Court. If they are convicted they can be fined.

Contact the Tenants Union for further details about offences and how to complain to Consumer Affairs Victoria

Keep in mind that if Consumer Affairs Victoria decides to prosecute, you will probably have to go to court as a witness and give evidence.

If you wish to complain about a real estate agent you can also contact the Estate Agent Resolution Service on ☎ 1300 737 030.



Locations of hearings of the VCAT – residential tenancies list

Ararat

Cnr Barkly and Ingor Streets, Ararat 3377

Bairnsdale

Nicholson Street, Bairnsdale 3875

Ballarat

100 Grenville Street South, Ballarat 3350

Benalla

Bridge Street, Benalla 3672

Bendigo

71 Pall Mall, Bendigo 3550

Cobram

Cnr Punt Road and High Street, Cobram 3644

Colac

Queen Street, Colac 3250

Dandenong

Cnr Foster and Pultney Streets, Dandenong 3175

Dromana

Codrington Street, Dromana 3936

Echuca

Heygarth Street, Echuca 3564

Frankston

Fletcher Road, Frankston 3199

Geelong

Railway Terrace, Geelong 3220

Hamilton

Martin Street, Hamilton 3300

Heidelberg

Jika Street, Heidelberg 3084

Horsham

Roberts Ave, Horsham 3400

Kerang

Victoria Street, Kerang 3579

Korumburra

Bridge Street, Korumburra 3950

Mansfield

Cnr High and Highett Street, Mansfield 3722

Maryborough

Clarendon Street, Maryborough 3465

Melbourne

Level 5, 55 King Street, Melbourne Vic 3000

Mildura

56 Deakin Avenue, Mildura 3500

Moe

Lloyd Street, Moe 3825

Myrtleford

Myrtle Street, Myrtleford 3737

Portland

67 Cliff Street, Portland 3305

Ringwood

Ringwood Street, Ringwood 3134

Sale

Foster Street (Princess Highway), Sale 3850

Seymour

Tallarook Street, Seymour 3660

Shepparton

High Street, Shepparton 3630

Stawell

Patrick Street, Stawell 3380

Sunshine

10 Foundry Road, Sunshine 3020

Swan Hill

Curlewis Street, Swan Hill 3585

Wangaratta

Faithful Street, Wangaratta 3677

Warrnambool

218 Koroit Street, Warrnambool 3280

Werribee

Cnr Duncans Road and Salisbury Street,
Werribee 3030

Wodonga

5 Elgin Boulevard, Wodonga 3690

Notes

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Tenant's Handbook

This fully updated handbook has been written specifically for Victorian tenants. It gives useful contact details and practical advice on every aspect of renting.

It includes:

- bonds
- compensation
- eviction
- privacy
- rent arrears
- rent increases
- repairs
- the Tribunal