

TENANT RIGHTS

ENGLISH

Introduction

All Victorian tenants have legal rights. These rights are guaranteed by the *Residential Tenancies Act 1997*. It is illegal for landlords to punish tenants or prevent them from exercising their rights.

The basic principles and procedures of the *Residential Tenancies Act 1997* are outlined in this handbook, which answers the most common tenancy questions. If you can't find the answer to your question in this handbook, or you need more information or assistance, contact the Tenants Union of Victoria.

The Tenants Union provides free and confidential services to help tenants exercise their rights. You can phone us on ☎ 9416 2577 or visit our website at www.tuv.org.au. If you need an interpreter, phone us through the Telephone Interpreting Service on ☎ 131 450.

The Tenants Union offers a number of services to tenants. We can:

- > help you fill in forms or agreements related to your tenancy
- > advise you on specific problems such as repairs, rent increases
- > negotiate and advocate on your behalf with your landlord or real estate agent
- > assist or represent you at the Victorian Civil and Administrative Tribunal
- > talk to your community group about tenants' rights

The Tenants Union is committed to providing information and resources to tenants who speak languages other than English.

Top 5 tips for new tenants

The following tips apply to most tenancy situations:

- 1** Do not be forced by landlords or real estate agents into signing forms or agreements that you cannot read or that you do not understand (the Tenants Union can explain the form or agreement to you).
- 2** If you make an agreement with your landlord or real estate agent, make sure it is in writing and that it is signed by yourself and your landlord or real estate agent (verbal agreements are not regarded as highly in Australia as they are in some other countries).
- 3** If you pay your landlord or real estate agent any money, ask for a signed and dated receipt, especially if you paid in cash.
- 4** Keep any receipts, documents, forms or agreements that relate to your tenancy in a safe place until well after your tenancy is over.
- 5** You can apply to the Victorian Civil and Administrative Tribunal (the Tribunal) if you cannot resolve a dispute with your landlord or real estate agent. The Tribunal is not a court. It will not punish you if you make an application that is later unsuccessful. It is an informal and inexpensive forum for dispute resolution, and tenants should take advantage its authority to ensure landlords and real estate agents respect their rights.

Starting a tenancy

Rental property applications

When you apply for a rental property, your landlord or real estate agent may ask you for personal information. It is illegal for them to ask you about:

- > your race
- > your political beliefs
- > your religion
- > your marital status
- > your health
- > your gender
- > your sexual preference

These factors have no bearing on your suitability as a tenant. Do not answer these questions if you don't want to. If your application is unsuccessful and you believe it failed because you refused to answer such a question, contact the Tenants Union for advice.

In some circumstances it is illegal for landlords or real estate agents to reject your application because you have children. If your application is rejected because you have children, contact the Tenants Union for advice.

Leases

If your application is successful, you will enter into a lease. Most leases are written agreements, although some are verbal agreements. There are two types of lease: fixed-term and periodic.

Fixed-term leases allow you to rent the property for a fixed period of time, usually six or 12 months. Periodic leases usually last from month to month. At the end of a fixed-term lease, your lease automatically becomes a periodic lease, unless you sign a new fixed-term lease. You do not have to move out at the end of a fixed-term lease, unless you want to or you receive a Notice to Vacate (see **Notices to Vacate**).

A written fixed-term lease offers you the greatest security if a tenancy dispute arises, although you are still covered by the *Residential Tenancies Act 1997* if your lease is periodic.

If you share your home with a friend, make sure their name is added to the lease. If you move out and your friend stays on, ask your landlord or real estate agent to remove your name from the lease. If they don't, you could be held responsible for any unpaid rent or damage to the property caused by your friend after you move out.

Rent & bond

At the start of your tenancy your landlord or real estate agent will ask you to pay the first month's rent in advance, plus an amount equal to one month's rent which will be held as a bond. You should not be asked to pay more than this.

The bond is held as security in case you fail to pay your rent or you damage the property.

The bond is held by a separate agency, the Residential Tenancies Bond Authority (RTBA). The landlord or real estate agent must give you a Bond Lodgement form to complete and sign. When you have completed and signed the form, you should return this to your landlord or real estate agent. They must then give you a copy for your records. The landlord or agent must lodge your bond with the RTBA within 14 days. The RTBA will send you a receipt and keep your bond in safekeeping until the end of your tenancy.

If you can't afford to pay the bond and you are a permanent resident of Australia, the Office of Housing may be able to help you with a bond loan. Ask for a Bond Loan Application form at your local Housing Office (under Human Services/Housing Services in the *White Pages Business & Government* telephone directory).

If you move out of your rental property and transfer your tenancy to another tenant, you should fill in a Transfer of Bond form (available from your real estate agent, the Tenants Union or Consumer Affairs Victoria).

Condition reports

Before your tenancy begins your landlord or real estate agent will inspect the rental property. They will fill in a Condition Report which describes the condition of the property and give you two copies of their completed report.

It is important that you make a note of any disagreements that you have with their assessment of the property on the report. If anything is broken or dirty you should write this on the report or you could be blamed for its condition at the end of your tenancy. When you have filled in and signed the report, return one copy to your landlord or real estate agent and keep the other copy for your records.

Other documents & information

Your landlord or real estate agent must give you contact details in case urgent repairs are needed. They must also give you a *Statement of Rights and Duties* booklet, which outlines the rights and responsibilities of landlords and tenants.

Utility connections

Before you move in, reconnect the electricity, gas, water and telephone utilities in your name or you could be charged for the previous tenant's usage. Your landlord or real estate agent can give you the contact details of your local utility provider.

You will be charged a reconnection fee for electricity and telephone connections.

During a tenancy

Repairs

Your landlord or real estate agent must ensure your rental property is clean and vacant at the start of your tenancy. They must also maintain your property in good condition throughout your tenancy.

Urgent repairs

Contact your landlord or real estate agent immediately if you have an urgent repair. The following problems are considered urgent:

- > 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 in the supply of water, hot water, cooking, heating or laundering services
- > a failure or breakdown of gas, electricity or water supply
- > a breakdown in a water appliances supplied by your landlord that will lead to a large amount of water being wasted
- > any fault or damage that make the premises unsafe or not secure
- > a serious fault in a lift or staircase

If your landlord or real estate agent cannot be contacted or they refuse to fix the urgent repair you can:

- > fix the problem yourself up to the cost of \$1000 and request reimbursement (be sure to keep receipts), or
- > apply to the Victorian Civil and Administrative Tribunal for an order that your landlord or real estate agent fix the problem

Non-urgent repairs

If the problem is not urgent, there are three steps to follow.

- 1** Send your landlord or real estate agent a Notice to Landlord (this is a form which is available from the Tenants Union or Consumer Affairs Victoria). This notice gives them 14 days to fix the problem.
- 2** If the problem is not fixed within 14 days, write to Consumer Affairs Victoria to ask them to investigate. Address your request to:
The Director
Consumer Affairs Victoria
GPO Box 123A
Melbourne VIC 3001

A Consumer Affairs inspector will visit your property and report on the problem.
They will send you a copy of their report.
- 3** If the report agrees that repairs are needed, you can apply to the Victorian Civil and Administrative Tribunal for an order that your landlord or real estate agent fix the problem.

Utility charges

You must pay for electricity, gas and water utilities if your rental property is separately metered. (A separate meter is one that measures supply to your property only.)

Your landlord must pay for these utilities if the property is not separately metered. The relevant utility supplier can tell you if your property is separately metered.

Tenants are almost always responsible for the payment of telephone utilities.

Privacy

Your landlord or real estate agent can only enter your rental property for certain reasons (eg to make necessary repairs). They must give you written notice that states their reason for wanting entry.

Your landlord or real estate agent must either get your consent to enter the property, or give you 24 hours written notice of their intention to enter. If the notice is posted they must allow two days for delivery. They can only enter between 8am and 6pm, and not on public holidays.

You can apply to the Victorian Civil and Administrative Tribunal for an order restricting their access to your rental property if your landlord or real estate agent have been making frequent or harassing visits.

Rent arrears

Your landlord or real estate agent can start eviction proceedings if you are 14 days or more in rent arrears. They cannot evict you without an order of the Victorian Civil and Administrative Tribunal and a Warrant of Possession. Even then, only the police can evict you.

Rent increases

Your landlord or real estate agent must give you 60 day's written notice of any proposed rent increase.

If you think the proposed increase is unfair, write to Consumer Affairs Victoria and ask them to investigate. You must write to Consumer Affairs within 30 days of receiving the rent increase notice.

A Consumer Affairs inspector will visit your property and report on the increase. They will send you a copy of their report.

If the report agrees that the increase is unfair, you can apply to the Victorian Civil and Administrative Tribunal for an order dismissing the proposed increase.

You must pay the increased rent until the Tribunal has made its order or you will be in rent arrears, which may result in you being evicted.

Ending a tenancy

Notices to Vacate

Your landlord or real estate agent must serve you with a Notice to Vacate if they want you to move out. The amount of notice depends upon their reason for wanting you to vacate. Contact the Tenants Union if you receive a Notice to Vacate and you do not want to vacate or you need more time. Remember, they cannot evict you without an order of the Victorian Civil and Administrative Tribunal.

Notice of Intention to Vacate

You must give your landlord or real estate agent written notice of your intention to vacate if you want to move out. The amount of time in your notice depends upon your circumstances.

You must give 28 days notice if you have a periodic lease or you want to move out on the last day of a fixed-term lease. If you have a periodic lease and you need to move out sooner, contact the Tenants Union for advice.

If you want to move out before the end of a fixed-term lease, the amount of notice required depends upon your circumstances. In most cases, if you move out before the end of the fixed-term lease, your landlord or real estate agent can ask you to pay advertising costs, a reletting cost, and rent until new tenants are found. Contact the Tenants Union for advice.

Bond recovery & references

At the end of your tenancy your landlord or real estate agent will inspect your rental property. They can make a claim against your bond if they think you have damaged the rental property, not left it in a clean condition, or you still owe rent.

If you agree with their claim, they will give you a Bond Claim form. If you are satisfied with the details on the form, sign it and return it to your landlord or real estate agent. Do not sign the form if you do not agree with what your landlord or real estate agent is claiming or if you do not understand what the form means.

If you have signed the form, your landlord or real estate agent will send it to the Residential Tenancies Bond Authority. The Authority will pay you and your landlord the amounts agreed to on the form.

If you disagree with their claim, they must apply to the Victorian Civil and Administrative Tribunal to retain some or all of your bond. At the Tribunal you will be given an opportunity to dispute your landlord's claim.

It is a good idea at the end of your tenancy to ask your landlord or real estate agent for a reference. Ask them to state that you paid your rent on time and that you kept your rental property clean and in good repair.

Compensation

You can claim compensation from your landlord or real estate agent if you suffer a loss because of their failure to meet their legal responsibilities. For example, you could make a claim for compensation if your furniture was water damaged as a direct result of their failure to repair a hole in your roof when you had asked for it to be repaired.

A compensation claim can be made before, during or after your tenancy.

To make a compensation claim you must send your landlord or real estate agent a Breach of Duty Notice (available from the Tenants Union or Consumer Affairs Victoria). Use this notice to explain what your loss and compensation claim is. If they do not compensate you within 14 days you can apply to the Victorian Civil and Administrative Tribunal for a compensation order.

Your landlord or real estate agent can also claim compensation from you if you fail to meet your legal responsibilities. For example, if you move out with rent owing. They must follow the same procedure.

The Tribunal does not award compensation for pain and suffering, physical injury or death, and cannot hear claims for amounts in excess of \$10 000 except in special circumstances.

Contact the Tenants Union if you want to make a compensation claim or if you receive a Breach of Duty Notice from your landlord or real estate agent.

Victorian Civil and Administrative Tribunal

The Victorian Civil and Administrative Tribunal resolves disputes between landlords and tenants. A Tribunal application costs \$33.30. If you are on a low income, the Tribunal may waive this fee.

The Tribunal's contact details are:

55 King St

Melbourne VIC 3000

☎ 9628 9800

1800 133 055 (freecall)

Fax 9628 9822

If you make an application to the Tribunal, you must send a copy of the application to your landlord within seven days. The Tribunal will tell you the time and location of your hearing. If your problem is urgent, inform the Tribunal at the time that you make your application.

Inform the Tribunal before the hearing date if you need an interpreter. This is a free service.

The Tenants Union can help you prepare for your Tribunal hearing. In special circumstances we can represent you at the hearing. This is a free service.

Complaints about landlords & real estate agents

You can lodge a complaint with Consumer Affairs Victoria if your landlord or agent has acted illegally or unprofessionally. If Consumer Affairs finds that your landlord or real estate agent has acted illegally they may be prosecuted in the courts.