

# When you get a Breach of Duty Notice

If your landlord believes that you haven't met one or more of your duties under the *Residential Tenancies Act 1997*, they can give you a Breach of Duty Notice.

## What are the duties for tenants?

The following list shows a tenant's duties under the Act. According to those duties, a tenant must:

- > not cause a nuisance or interfere with the peace, comfort or privacy of a neighbouring tenant
- > keep the property in a reasonably clean condition
- > not damage the property or common areas
- > not add fixtures (such as picture hooks) or make alterations to the property without the landlord's consent
- > restore the property to its original condition before moving out if additions or alterations have been made
- > provide the landlord with a key when changing or adding a lock to an external door or window
- > allow the landlord entry to the property when they have given proper written notice

A Breach of Duty Notice is formal notice that you must stop 'breaching your duty' as a tenant and/or pay compensation within 14 days of receiving the notice. If you don't, the landlord may apply to the Victorian Civil and Administrative Tribunal for an order that you do so.

## What must be included in a Breach of Duty Notice?

In order to be valid, a Breach of Duty notice must:

- > state which duty or duties under the Act the landlord believes you have breached
- > give details of the loss or damage caused by the breach
- > state that you are required to fix the breach and/or pay compensation
- > advise that you must not repeat the breach

- > advise that if you don't respond accordingly, the landlord may apply for a compensation and/or compliance order from the Victorian Civil and Administrative Tribunal
- > advise that the landlord can give you a 14-day Notice to Vacate if you breach the same duty for a third time, and on both previous occasions you were given a valid Breach of Duty Notice
- > be handed to you in person or if it is sent by mail, allow an extra 2 business days for mail delivery
- > only be used for breaches of duty under the *Residential Tenancies Act 1997* and not for any other reason

➡ There is a difference between a breach of duty and a breach of your tenancy agreement (lease). For example, keeping a pet or not looking after the garden may be breaches of your tenancy agreement but are not breaches of duty under the *Residential Tenancies Act 1997*. A landlord cannot serve a Breach of Duty Notice for the breach of a term in your tenancy agreement, but they can apply to the Tribunal for a compliance order.

## Compensation and compliance orders

If the landlord applies to the Victorian Civil and Administrative Tribunal for a compensation and/or compliance order, they must send you a copy of their application form. You will then receive a Notice of Hearing from the Tribunal telling you the time, date and location of the hearing. **If you want to dispute the landlord's claims you will need to go to the Tribunal hearing.** If you don't go to the hearing, it will go ahead without you and it's very likely that the landlord will succeed in their claims against you.

At the Tribunal hearing you will be given the chance to dispute the landlord's claims and/or have the amount of compensation reduced.

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While the landlord has to convince the Tribunal that you have breached the *Residential Tenancies Act 1997* and provide evidence that proves their claim, you should be prepared to defend yourself (eg by bringing photographs, witnesses or witness statements). For more information see the ***Defending a compensation claim*** and ***The Victorian Civil and Administrative Tribunal*** fact sheets, or contact the Tenants Union for advice.

## Notice to Vacate

If the landlord believes that you have not fixed the breach within 14 days after they have given you a Breach of Duty Notice, they can give you a second notice and/or apply to the Victorian Civil and Administrative Tribunal for a compliance order. If the Tribunal makes an order in favour of the landlord and you don't carry it out, the landlord can give you a 14-day Notice to Vacate.

➔ Consumer Affairs Victoria can prosecute for failure to comply with a Tribunal order, and this applies to both monetary and non-monetary orders. At the time of printing, the fine is \$1168.20 plus \$233.64 a day until the order is complied with, up to a maximum of \$2336.40.

The landlord can also give you a 14-day Notice to Vacate without going to the Tribunal if you breach the same duty for a third time, and on both previous occasions you were given a valid Breach of Duty Notice.

## Giving your landlord a Breach of Duty Notice

As a tenant you can give your landlord a Breach of Duty Notice if you think they have breached their duty under the *Residential Tenancies Act 1997*. See the ***Giving your landlord a Breach of Duty Notice*** and ***Complaints about landlords and real estate agents*** fact sheets for more information.

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