

Residential Tenancies Practice Note 15-01

Witness and Documents Summons

Background

A tenant must have all the relevant evidence available in order to have the best chance of success in an application or in defending a claim by a landlord. A witness and documents summons can assist in obtaining this evidence when another party is reluctant or legally unable to provide the information.

This practice note will provide guidance as to how to use a witness summons pursuant to section 104 of the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act), in order to compel the relevant parties to attend a hearing at the Victorian Civil and Administrative Tribunal (VCAT) and/or produce the relevant documents. It will also outline other alternatives, such as seeking a direction from VCAT that another party should produce a document.

A summons can only be issued when there is a proceeding at VCAT. For this reason it is important to act quickly when a summons is likely to be required.

This practice note does not give guidance in relation to expert witnesses as provided for in the section 94 of the VCAT Act, however we note the risk of costs are significantly higher.

Relevant Provision

Section 104 of the VCAT Act states (at the time of publishing):

Witness summons

- (1) The principal registrar—
 - (a) may; and
 - (b) if directed by the Tribunal, must—

issue a summons to a person to attend the Tribunal to give evidence and produce any documents that are referred to in the summons.

- (2) A summons may be issued, or a direction given, under subsection (1) at the request of a party or on the principal registrar's or Tribunal's own initiative.

- (3) The Tribunal's power to make a direction under subsection (1)(b) in a proceeding is exercisable by a presidential member or the presiding member.

- (4) A person who attends in answer to a summons is entitled to be paid the prescribed fees and allowances or, if no fees and allowances are prescribed, the fees and allowances (if any) determined by the Tribunal.

- (5) The fees and allowances are to be paid—

- (a) if the person was summoned at the request of a party, by that party; or
- (b) if the person was summoned on the initiative of the Tribunal, by the parties in the proportion determined by the Tribunal.

Effectiveness of a summons

A summons is a highly effective way of obtaining relevant and necessary evidence, as non-compliance with summons may lead to the issue of arrest warrant to enable the police to bring the person before the Tribunal.

Difficulties of using a summons

A witness summons requires a person to attend a hearing, which is unlike the proceedings in higher courts, where a subpoena may be issued to ask for documents to be produced before a hearing. To comply with a summons, a person must also attend with any documentation they are providing and they cannot simply provide documents. There are other pathways that may assist a tenant in obtaining specific documents.

Direction Powers - section 80 VCAT Act

The tribunal has a broad discretion under section 80 of the VCAT Act to ensure an expeditious and fair hearing of a matter. Specifically, this power may be used to produce a document or to provide information in a proceeding for review of a decision.

Documents from Third parties - section 81 VCAT Act

A party who is seeking documents from a third party can seek a direction under section 81 of the VCAT Act for an order that this party produce the document within a designated timeframe. This section should be read in light of section 80 for clear interpretation.

Section 81 of the VCAT Act is not often observed or utilised in residential tenancies disputes. Given the nature of residential tenancies disputes, these applications should be made to VCAT as soon as practicable in a dispute and this application must be determined by a Member rather than by the registrar.

As a matter of practice it is unclear whether a “duty member” will make such an Order ex-parte, or whether it would require a hearing. In any event, if such a request is made to VCAT the other side should be informed of the request.

Case examples:

- [Chandrakumar v Knox Realty Pty Ltd \(Civil Claims\) \[2014\] VCAT 1639](#)
- [Foundry Supermarket Pty Ltd v Da Vinci Foundry Pty Ltd and Anor \(Retail Tenancies\) \[2011\] VCAT 364](#)

Adjournments

Part of the dilemma of a witness summons is the party requesting the summons may be at a disadvantage because of not knowing what information and evidence will be adduced by statement or documents.

If the requested documents are voluminous it may be appropriate that the matter be adjourned. It is important to consider the risk of costs when seeking an adjournment, as the more a matter is adjourned, the greater the costs risks that may apply if the section 109 is displaced, or if a witness is required to attend.

Many Tribunal Members will be respectful of this issue and will try to get the relevant witnesses heard first, where appropriate to do so.

Why use a summons?

Unlike a lawyer, an estate agent cannot claim legal privilege against a summons. Often, an estate agent's file will contain file notes, records and other forms of documentation including correspondence to and/or from their landlord, which can be requested to bring before the Tribunal.

Summons are also useful to establish the veracity and context of other evidence as they help to remove omissions.

Who can request a summons?

Either party (applicant, respondent, or a joined part/second respondent) to a proceeding can make an application to the Tribunal (usually directly to the registrar) for the issue of a summons.

The Tribunal (presiding Member, Presidential Member, or the registrar) may of their own volition deem it appropriate to issue a summons.

Under section 98(1)(c), VCAT “may inform itself on any matter as it sees fit.” VCAT is quasi-inquisitorial, and not strictly adversarial. This means if VCAT wants to find out something, it has the power to do so.

Generally, the Tribunal will not issue summons under its own discretion unless it is a necessary fact upon which the decision pivots, and that cannot easily be ascertained from the relevant party. Costs for summons issued by the Tribunal can be awarded at the discretion of the Tribunal and can be apportioned between parties.

What information?

It is important to recognise that some evidence may be adverse to the best interests of the tenant. Sometimes, a tenant may seek information because it is unknown or unclear. When considering a summons or a request for documents there must be a measured consideration of the relevance, and the risk that the evidence obtained could be fatal to a claim. Once evidence is put before the Tribunal it cannot generally be withdrawn.

Again, it is important to note that under section 98(1)(b), the Tribunal is not bound by the rules of evidence or any practices, or procedures applicable to courts of records, except to the extent that it adopts those rules and procedures.

Who can be summonsed?

Effectively anyone can be summonsed, but the Tribunal must be satisfied that it is necessary, or at least that there is a proper basis. It must be relevant and inform the dispute and the determination.

Is the evidence relevant?

The decision to issue a summons vests with registry. However, if the registry refuses to seal the summons, the matter can be put before the Tribunal.

On this basis the applicant for the summons must show:

- proper cause for the summons
- the person being summoned is reasonably capable of giving the evidence (it is not appropriate to summons a child)
- the information sought is relevant
- the summons is not oppressive
- that the summons has a bona fide basis
- is not otherwise an abuse of process.
- Not a “fishing expedition”.

A summons will be impermissible if it is simply “fishing” for information or documents. For this reason it is important to have a clearly drafted summons that contemplates what a tenant is trying to achieve.

Can someone refuse to attend on a summons?

Legally, unless the summons is set aside by order of the Tribunal, parties must comply with the summons.

Setting a summons aside

Parties who wish to dispute the issue of the summons should raise concerns with the summoning party as soon as possible after being served a summons to identify any obvious issues or mistakes, or to resolve with other evidence could satisfy the summoning party, and conditionally withdraw the summons.

If there is an error in the summons the issuing party can, by agreement rectify or agree to withdraw the summons, in whole or part. If this is done, VCAT should also be given notice of this agreement.

There are not clear principles at VCAT that relate to the withdrawal or the setting aside a summons. (**case example:** *Purnell Bros Pty Ltd v Transport Engineers Pty Ltd* (1984) 73 FLR 160 at 17) However, often inferior courts will look to superior court rules as a matter of procedural guidance. In this case a tenant or their advocate may wish to consider the Federal Court Rules - Order 27 Rule 4(1), and Supreme Court (General Civil Procedure) Rules 2005 – Order 42A. A notice of objection to the summons should be communicated in writing to the registrar. If a party has withdrawn a summons and then later again demands the information as a matter of necessity, this will likely engage section 104 (5) and 109 of the VCAT for the purpose of increasing costs.

Recent Case example: [Trombone Investments Pty Ltd v TBT \(Victoria\) Pty Ltd \(Building and Property\) \[2015\] VCAT 289 \(11 February 2015\)](#)

VCAT Regulations

The relevant VCAT Regulations 2008 (at the time of printing) are regulations [4.14](#), [4.15](#) and [4.16](#).

A summons must:

- be in Form 4 (see attached below).
- be served by the person who filed the summons unless otherwise directed by the Tribunal
- If a registrar refuses to accept the summons, the party filing the summons can have the decision heard before a Member of the Tribunal.

If a Tribunal Member is required to hear a matter, the issues of procedural fairness and the entitlement for written reasons will be enlivened. It also may provide for preliminary indications as to costs, relevance or concerns the Tribunal may have in relation to the matter. This is usually an ex parte hearing.

Procedure

The Tenants Union of Victoria recommends the following steps when considering a summons:

Step 1. Informal request for documents

Tenants should request the documents in writing from the other party on an urgent basis, depending on the timeframe. A tenant may consider preparing the summons documents if it is likely that the request for documents will not be complied with.

Note: A summons cannot be issued until an application has been filed and allocated a Reference number from the Tribunal.

Step 2. File the summons

If the request for documents is not complied with, the party filing the summons must complete Form 4 of *Victorian Civil and Administrative Tribunal Regulations 2008*, found in [schedule 2](#). As at December 2015, the filing fee for a summons is \$21.80 (see [VCAT website](#) or [VCAT \(fees\) regulations](#) for annual updates).

A tenant must take sufficient copies of the summons to be sealed (stamped) by the registrar. We recommend a total of 4 copies as good practice:

- One is kept by VCAT (to ensure there are no alterations between documents)
- One is kept by the person filing the summons. This must be attached as an annexure to the affidavit of service to attest the document that was given to the witness.

- One is served on the named witness together with the relevant conduct money sufficient to enable them to attend the hearing without incurring travelling costs.
- One is a spare to take just in case something happens. It does not need to be sealed.

Procedural fairness and proper conduct

It is appropriate to advise all parties and give them a copy of the summons and to note the requested documentation. For lawyers, it is also important to consider the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (rule 22.5-22.6).

Step 3. Serving the Summons – Section 140 VCAT Act

It is fundamental that a summons is served correctly and according to law to ensure that the jurisdiction of the Tribunal is invoked correctly. This will be very important if any action is to be taken by the Tribunal in relation to non-compliance with a summons. Section 140 of the VCAT Act provides guidance on how this must be done.

When must a summons be served?

According to regulation 4.15, a summons must be served on a witness “*within reasonable time prior to the hearing.*” In general, the earlier a summons can be issued the better, subject to step 1 above.

A summons must be served by the party that filed the summons unless otherwise directed by the Tribunal. This may be appropriate in matters relating to family violence, or if there is a risk of serious harm or altercation.

This should be raised and discussed with the registrar or member if it is required as soon as practicable.

Conduct Money

Conduct money must be paid in accordance with VCAT Reg 4.15(2), and it should be provided at the time of service of the summons. Payment must be sufficient to enable the party to attend the hearing (ie. public transport costs, or other transport).

There is no clear precedent to suggest a tenant needs to pay money to a party who is already bound to attend a proceeding. However, if a specific real estate agent is sought to attend the hearing, then the conduct money may need to be paid. When in doubt, it may be better to pay the sum in good faith rather than cause an unnecessary adjournment.

Proof of Conduct Money

You may need to produce proof of payment of conduct money. Cash can be used as conduct money however it is best that the party acknowledges the receipt of cash in writing. If this is refused then it may be appropriate to note this on the affidavit of service. Alternatively, to ensure proof parties may wish to utilise money orders from the local post office made out into the name of the summons party (usually cost around \$8 -\$10 to purchase).

How much is conduct money?

\$20 should be sufficient for parties summonsed to attend a VCAT forum in the metropolitan region from a metropolitan business or home address.

Additional money may be required if parties are travelling regionally, however conduct money is seldom disputed. The overall cost discretion of the Tribunal under section 104, is likely far more significant and can make up any deficiencies.

Step 4. Complete an Affidavit of Service

An affidavit of service should be completed at the earliest time possible after signing the summons. Please see the form below for further reference. An affidavit is a sworn document, and must be attested to by a qualified person. Strictly speaking, the affidavit should exhibit a true copy of the sealed summons of Form 4, but this appears to be required as the Tribunal retains a sealed copy of the summons.

Step 5. The hearing and examination

It is important to notify the witness of any changes to the hearing date or time in writing. At the hearing, the parties should utilise the summons to the best of their ability, and consider whether the production of documents requires them to request an adjournment. It is usually appropriate to utilise the witness for the purpose of oral examination so that they do not have to return for subsequent hearings.

Can you summons a person from overseas or interstate to attend?

Generally, the Tribunal does not have jurisdiction to summons a party from another jurisdiction internationally (overseas). In Australia, Form 4 must be used under the [Service and Execution of Process Act 1992 \(Cth\)](#). Generally, four days should be permitted for postage, and further 21 days should be provided for sufficient time for service of a document. VCAT may grant leave to allow a short period of service in certain circumstances.

Dominant place of business

Formally the Tribunal's jurisdiction is limited to the State of Victoria. If the landlord or the operator of the property is a company there may be issues about the dominant place of business. Seek legal advice and raise this issue with the register at the time of filing the summons.

Institutions or public authorities

The rules of service are slightly different for institutions or public authorities (see section 140(1)(b) & (c) of the VCAT Act). Entities can delegate an agent to attend unless a specific party has been summonsed.

Implied Knowledge

Generally, an agent of the landlord or of a corporation is deemed to have knowledge. This is not always effective as sometimes witness on examination genuinely do not know the information that you are asking. This can be combatted by outlining the proposed questions in your request for documents and to put them on notice of the line of enquiry.

Can a witness attend over the phone?

The Tribunal is generally reluctant to provide leave for a witness to appear over the telephone because of issues with identity verification and the ability to control and observe the body language of the witness. This is relevant to credibility and good judicial decision making.

There may be some exemptions where a witness is willing to participate, and/or is incapable of attending to the hearing. This may include people who are in prison or other forms of involuntary custody, or severe medical conditions. In such cases, request should be put to a duty member together with the relevant supporting evidence.

Real Estate Agents

Unlike lawyers, real estate agents do not have the ability to claim legal privilege over communication. This means that any communications between an agent and landlord, file notes and documents can be summonsed and an agent must answer questions under cross examination that are put to them.

Legal Privilege withstanding summons?

In some circumstances a lawyer may be able to claim legal privilege on communications and documents that relate to a landlord and tenant dispute. Unlike real estate agents, lawyers are generally not involved in the authorisation and dealings with the actual rented premises. They do not attend the premises under the relevant entry provisions, and are often not a witness to much more than communications with the real estate agent or landlord. Questions of privilege in this jurisdiction have not been thoroughly explored.

What is Legal Privilege?

Generally, any communication between a client and a lawyer where the dominant purpose is legal advice can be covered by legal privilege. This can also extend to paralegals and support staff who work under supervision of a lawyer. In some circumstances, this can extend to communication when a third party has communicated with a lawyer (even if there is no litigation pending). Lawyers should be careful not to waiver confidentiality.

For further information, see *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, Dawson J states at 128-129 and for a detailed analysis of modern privilege *Mitic v OZ Minerals Limited* [2015] FCA 1152 (28 October 2015) at [11].

A more complex question is relation to *Baker v Campbell* is the operation of privilege with respect to section 62 of the VCAT Act, and section 13 and 32 of the Charter. As this is likely unique to the residential tenancies list. In our opinion it is unlikely that the confidentiality obligations of advocates without legal supervision or estate agents (in light of the statutory Estate Agent provision and regulations), will be elevated to an equivalent standard of legal professional privilege and be able to withstand a summons.

Fees and Costs

Fees and costs are different and are treated differently at the Tribunal. They are outlined in section 115A-D, 104(4)&(5), and 109 of the VCAT Act. Each of the above provisions contain independent discretion with respect to fees and costs. For more information generally (see [Fees and Costs for a VCAT hearing](#)).

For the purpose of section 115A-D of the VCAT Act, the fees and allowances under section 104(5) of a summons can be recoverable as a cost that follows the event. As a result of section 109 of the VCAT Act, the presumption against costs remains separate, so that it is possible to be ordered to reimburse for fees (most likely the application fee, and the costs of the summons (filing, travel money, and conduct expenses) as fees but not to be held liable for the costs of the process such as legal costs.

There is a high risk of having fees and costs awarded against a party if a matter has been poorly conducted and a summons has little or no benefit. Generally, if any costs orders are made they should not be set off against any entitled compensation. But, the rules of the Tribunal in this regard are not clear.

Relevant case example see: [Korolak v Wildon \(Residential Tenancies\) \[2015\] VCAT 19 \(5 January 2015\)](#)

Contempt

Non-compliance with a summons is considered to be in contempt of the Tribunal pursuant to section 134 and 137 of the VCAT Act. Contempt can be met with a direct and significant civil penalty. If serious enough, the Tribunal may also refer for prosecution, which could result in imprisonment.

VCAT has a power to issue an arrest warrant if a party does not comply with a summons. This can be executed by the police and would require the person to be compelled to attend the hearing. This

is in accordance with section 137(2) of the VCAT Act, regulation 4.21, and the prescribed form is [Form 5 of schedule 2](#). This must be authorised by the President or Vice President of VCAT.

Parties seeking to bring contempt proceedings may file an application pursuant to section 452 of the RT Act and 137 of the VCAT Act. Contempt must be established beyond reasonable doubt as it is a criminal proceeding. It is paramount that a summons is serviced correctly and the affidavit is correctly completed and executed by an authorised person. We note that the Tribunal is generally reluctant to make orders in relation to contempt unless the conduct is particularly egregious.

Relevant case example see: [Cua v Versaci \(Civil Claims\) \[2006\] VCAT 2373 \(23 November 2006\)](#)
In this case, wilful non-attendance on a summons resulted in a \$7,500 fine.

Resources

[Section 104 VCAT Act \(AustLII website\)](#)

[Summons to appear and affidavit form \(VCAT website\)](#)

[Example of witness statement \(VCAT website\)](#)

[Interstate Summons and Service Information \(VCAT website\)](#)

[Summons to appear \(interstate\): Sample affidavit in support of interstate summons to appear \(VCAT website\)](#)

EXAMPLES OF REQUESTED DOCUMENTS (parties will need to consider their own wording and issues of relevance in formulating a summons)

List of Documents Requested:

We request that you provide the following documents.

For defending a compensation claim

- A copy of any and all notice of rent increase served on the tenant.
- A copy of any and all breach of duty notices and annexures sent to the tenant during the tenancy.
- A copy of the steam cleaning invoice paid by the landlord immediately prior to the tenant taking possession.
- A copy of the purchase receipt and trade invoice for the laying of the carpet in the rented premises.
- A copy of the invoice from the real estate agent to the landlord in relation to the reletting fees.

For making a compensation claim

- A copy of any and all file notes, and/or records in relation to the tenant requesting repairs of [item A].
- A copy of any correspondence or file note from the real estate to the landlord in relation to [Item A]
- A copy of any correspondence or file note from the landlord to the real estate in relation to [Item A]
- A copy of any correspondence from previous tenants, or Orders from the Tribunal in relation to [Item A].
- A copy of any correspondence or file note to a trades person hired by the real estate agent or landlord, to attend to fix [Item A].
- A copy of any correspondence or file note to a trades person hired by the real estate agent or landlord, to attend to fix [Item A].
- A copy of any invoices billed to the real estate agent by trades person in relation to any costs associated with [Item A].
- A copy of any trades person report or documents in relation to the works done, and the likely cause of the [Item A] need to be repaired.
- A copy of any retainer, memorandum or other on-going agreement between the real estate agent and the tradesperson who attended in relation to [item A].
- A copy of the qualifications and licence identification number of the tradesperson who attended in relation to [item A].
- A copy of any compliance certificate issued by the trades person in relation to works done to [item A].
- A personal address for service (not being the real estate agent) of the landlord for the enforcing any Orders for compensation.

For Notices to Vacate

- If the notice to vacate was served via registered post, the relevant identification number of the registered post.
- A copy of the correspondence or files notes made in relation to the landlord directing the landlord If the notice to vacate was served via registered post, the relevant identification number of the registered post.
- A copy of any audio recording, CCTV, or photographs that the landlord intends to rely on in relation to the notice to vacate dated [dd/mm/yyyy]

For Rent Arrears

- A full copy of the rental ledger for the total period of the tenancy.
- A copy of any and all the receipts issued to the tenant for payment of rent.
- A copy of any and all the receipts issued to the tenant for payment of utilities.
- A copy of any and all the receipts issued to the tenant for payment of [item].

For Nuisance, Disruption, Non-compliance, and Successive Breach, Danger, Illegal Use

- A copy of any complaint received by the landlord in relation to the notice to vacate dated [dd/mm/yyyy]
- A list of names of any witness that the landlord intended rely on in relation to the notice to vacate dated [dd/mm/yyyy]
- A copy of any witness statement, depositions or statutory declarations that the landlord intended rely on in relation to the notice to vacate dated [dd/mm/yyyy]

For rooming houses

- A copy of the lease agreement as between the rooming house operator, and the owner of the rented premises.
- A copy of the written consent of the owner of the premises to use the premises as a rooming house.
- A copy of the rooming house's current and approved registration with responsible authority (local Council), as required by section 67 of the *Public Health and Wellbeing Act 2008*.
- the register of maintenance and electrical certificates for gas and electricity pursuant to regulations 23 and 24 of the *Residential Tenancies (Rooming House Standards) Regulations 2012*.
- A copy of the register of maintenance and electrical certificates for gas and electricity pursuant to regulations 23 and 24 of the *Residential Tenancies (Rooming House Standards) Regulations 2012*.
- A copy of the register as required by regulation 26 of the PUBLIC HEALTH AND WELLBEING REGULATIONS 2009.

EXAMPLE 1 – EMAIL TO OTHER PARTY TO REQUEST RELEVANT DOCUMENTS

Note: this is an example only, and is being used in the context of a simple compensation claim.

[date]

[Real Estate Agent]
[address]

[via fax (03)xxxx-xxxx / email x@y.com.au]

[your ref]
[our ref]

Dear Smith Realty Pty Ltd,

Tenant	Tom Tenant
Landlord	Larry Landlord
Rented Premises	8 Johnstone Street, Fictitious 1000
VCAT Ref:	R2015/xxxxxx , Larry Landlord v Tom Tenant

RE: Request for documents

We refer to the above and write on behalf of the tenant.

We write in relation to the current above dispute. We believe that in order to expedite this matter, it is necessary to obtain documents requested below.

This is a matter of procedural fairness, and should reduce the costs for all parties in preventing unnecessary adjournments. This may also assist the parties in reaching a settlement agreement.

List of Documents Requested:

We request that you provide the following documents as outlined in Schedule 1 of this letter.

Purpose of the Request - Stains in Bedroom 1 - Carpet

We have made this request because a tenant is not liable for fair wear and tear. The tenant does not admit to causing damage to the carpet in bedroom 1. The tenant intends to defend this claim.

The information sought is intended to establish the condition of the carpet at the commencement the tenancy, at the end of the tenancy, and to establish the value of the carpet with respect to its age and depreciation.

The information sought is also to determine whether there is evidence to support any prior incidents involving the carpet such as fire, flood, mould or disputes in relation to animals.

Timeframe to provide the relevant documents

Respectfully, please provide a written response within 3 business days of receiving this letter as to whether you are willing to provide these documents voluntarily.

If you are willing to provide those documents prior to the hearing, please indicate *when* those documents would be provided. It is requested that this be not less than [] days prior to the hearing.

If there is any document that has been requested which is not in existence, please provide written confirmation of this fact.

If you wish provide the requested documents, please send them via:

Email to: _____ and/or

Registered Post to: _____

Consent to adjournment

If you are unable to provide these documents by the time of any scheduled hearing, please provide your consent in writing as to whether you consent to adjourn the matter until such time the relevant documents can be exchanged and provide at least [] day for parties to review the documents prior to the hearing.

If we do not hear from you – Witness Summons - Section 104 VCAT Act

Take note: If we do not hear from you in relation to the above within 3 business days, we shall proceed to file a summons pursuant to section 104 of the VCAT Act to compel the relevant requested is produced.

Indication of costs on summons

Given that you are required to attend the hearing, and the likely summons and relevant information should be at your disposal if it is in existence. We expected that the necessary costs for any conduct is nil.

Additional witness summons or expert witnesses (trades people etc.)

If we have requested the attendance of any witness or trades person or other professional in Schedule 1, please indicate their hourly rate of pay for their ordinary work, the distance they are required to travel, and mode of travel to get to the hearing for the purposes of ascertaining conduct money and allowances as directed by the Tribunal.

We estimate they will need to be available for [time] hours for the hearing.

Acceptance of alternative documents

If for any reasons a witness, trades person or other expert is unavailable or would prefer not to be compelled to attend a hearing, please provide a statutory declaration in answer to questions as listed in schedule 2. to this letter. Obviously, the person may choose to depose any other information they consider appropriate and relevant.

Any fees and allowances under section 104(4) of the VCAT Act, will be at the discretion of the Tribunal.

Take Note: If you do not comply with this informal request for information to expedite this matter, we may produce this letter as evidence with respect to section 104, 109 and 115A-D of the VCAT Act.

If it has been necessary to issue a summons, we shall produce this letter as evidence of your unwillingness to comply with our request. We note that the Tribunal may obviously consider any Privacy legislation where applicable in exercising their discretion as to costs.

If you have any questions in relation to the above, please do not hesitate to contact us via our email on [email address]

Sincerely,

SCHEDULE 1.**REQUEST FOR EVIDENCE AND INFORMATION**

1. A copy of the condition report made at the commencement of the tenancy.
2. A copy of the steam cleaning invoice paid by the landlord immediately prior to the tenant taking possession.
3. A copy of previous VCAT Orders as between the landlord and any former tenant, in relation to the state of the carpet.
4. A statement from the real estate agent to determine if they are aware of any free roaming pets previously occupying the rented premises.
5. Copies of the photos by the estate agent immediately after the termination of the tenancy.
6. Copies of the correspondence and any files notes as between the estate agent and the landlord in relation the carpet.
7. A copy of the purchase receipt of the carpet, and the trade invoice for the laying of the carpet in the rented premise prior to the tenant taking possession of the property.
8. A copy of the purchase receipt of the carpet, and the trade invoice for the laying of the carpet in the rented premise after the tenant has vacated the rented premises.

SCHEDULE 2.**QUESTIONS TO WITNESS FOR DEPOSITION (example)**

Question 1. When did the landlord contact you in relation to the carpet, and what were you directed to do?

Question 2. What are your qualifications as a tradesperson?

Question 3. When did you attend the rented premises for the first time?

Question 4. What works did you perform?

FORM 4**SUMMONS TO APPEAR/AFFIDAVIT OF SERVICE FOR SUMMONS TO WITNESS**

An example of this form appears on the next pages.

You can access the form on the [VCAT website](#).

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific case and you require advice, then you should contact us on (03) 9411 1444.

FORM 4

Victorian Civil and Administrative Tribunal Rules 2008 Rule 4.14

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLEASE USE BLOCK LETTERS

Tribunal Reference No:

Applicant:

Respondent:

SUMMONS TO APPEAR

To:
Name

Address

You are summoned pursuant to section 104 of the **Victorian Civil and Administrative Tribunal Act 1998** to appear before the Victorian Civil and Administrative Tribunal at

.....[address of Tribunal]

ata.m./pm. on [date], or, if notice of a later day is given to you by the Tribunal [*or identify party seeking the attendance of the person summoned*] or the solicitor for that party, the later day, and until you are excused from further attending

* to give evidence; and

* to produce the following documents:

.....
.....

Principal Registrar

Date

This summons has been issued at the -

- * request of the applicant;***
- * request of the respondent;***
- * direction of the principal registrar;***
- * direction of the Tribunal.***

****Delete if inapplicable.***

Note:

1. Certain fees and allowances are payable to a witness.
2. Failure to attend at the time and place specified above without reasonable excuse may render you liable to imprisonment, a fine, or both, as well as a daily penalty until you attend or produce the document as required, under section 134 of the **Victorian Civil and Administrative Tribunal Act 1998**.
3. The Tribunal may direct your apprehension if you fail to attend.

AFFIDAVIT OF SERVICE FOR SUMMONS TO WITNESS

Tribunal Reference Number/.....

I, of

..... in the State

of Victoria make oath and say that I served

..... (Name of witness)

with the summons by:

(*delete whichever is inapplicable)

- delivering a true copy to the witness personally;
- by sending it by post, facsimile or other electronic transmission;
- by leaving with the same for the witness at their usual or last known residential or business address with a person on the premises apparently at least 16 years old and apparently residing or employed there;
- to the registered office of the company at:

on the day of 20..... at *am/pm

*on facsimile number

Sworn at in the said State, the day of

..... 20.....

Deponent's signature:
(person making affidavit to sign here)

Before me:
(signature of person taking affidavit)

.....
(print name, address & qualification)

The authorised witness must print or stamp his or her name, address, and title under section 123c of the Evidence (Miscellaneous Provisions) Act 1958 (as of 1 January 2010), (previously Evidence Act 1958), (e.g. Justice of the Peace, Current Legal Practitioner, Registrar of the Magistrates Court, Sergeant of Police, Member of the Parliament of Victoria)

HOW DO I SERVE A SUMMONS TO APPEAR?

A summons may be served in a manner set out in section 140 of the *Victorian Civil and Administrative Tribunal Act 1998*, which reads as follows:

Section 140

1. For the purposes of this Act, a notice, order or other document may be served on or given to a person -
 - a. if the person is a natural person -
 - i. by delivering it personally to the person; or
 - ii. by sending it by post, facsimile or other electronic transmission to the person at his or her usual or last known residential or business address; or
 - iii. by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
 - b. if the person is a company incorporated under the Corporations Act-
 - i. by delivering it personally to the registered office of the company; or
 - ii. by sending it by post, facsimile or other electronic transmission to the registered office of the company; or
 - iii. in any other way that service of documents may be effected on a body corporate; or
 - c. if the person is an incorporated association within the meaning of the *Associations Incorporation Reform Act 2012*, in accordance with section 217 of that Act; or
 - d. in any case-
 - i. in a manner permitted by the rules; or
 - ii. in a manner directed by the Tribunal.
2. For the purposes of this Act, a notice or other document may be served on or given to an unincorporated association-
 - a. by delivering it personally to the president, secretary or other similar officer of the association; or
 - b. by sending it by post, facsimile or other electronic transmission to the president, secretary or other similar officer of the association at that person's usual or last known residential or business address; or
 - c. in any other manner
 - i. permitted by the rules; or
 - ii. directed by the Tribunal.
3. If the Tribunal directs that notice be given to a person, or a class of persons, by advertisement or publication of the notice, that advertisement or publication must be taken to be service of notice on the person, or persons in that class, as the case requires.

WHO IS AUTHORISED TO TAKE AN AFFIDAVIT?

Persons qualified to take affidavits in Victoria include:

- The holder of an office in the public service of Victoria that is prescribed as an office of which the holder may receive affidavits;
- A member of the police force of or above the rank of sergeant or for the time being in charge of a police station;
- A Solicitor who is a current practitioner;
- A Justice of the Peace or a Bail Justice;
- The Registrar or a Deputy Registrar of the Magistrates' Court.

Please note that the following persons are NOT qualified to take affidavits:

Dentists, Doctors, Pharmacists, Teachers, Bank Managers, Accountants.