

Unfit for human habitation

Background

The expression 'unfit for human habitation' appears throughout the Residential Tenancies Act, particularly in relation to the termination of a tenancy agreement or residency right. The expression is not defined in the Act.

What is the issue?

Under ss 226 and 227 of the Act, a tenancy agreement terminates if the tenant has not entered into possession of the rented premises and the tenant or landlord has given notice of termination to the other party on the ground that the premises are unfit for human habitation, or are destroyed totally or to such an extent as to be rendered unsafe.

Under s 238, a tenant may give a landlord notice of intention to vacate rented premises if the premises are unfit for human habitation, or have been destroyed totally or to such an extent as to be rendered unsafe. The termination date may be the date of the notice, or a later date.

Under s 245, a landlord may give a tenant immediate notice to vacate rented premises in the circumstances set out in s 238.

Under s 272, a residency right ends if the resident's room or the rooming house is unfit for human habitation, or has been destroyed totally or to such an extent as to be rendered unsafe. A resident who vacates a room without giving notice is exempt from paying further rent if the rooming house or room has become unsafe or unfit for human habitation (s 275).

In relation to caravan parks, a resident may give a notice of intention to vacate a caravan if the caravan is unfit for human habitation, or has been destroyed totally or to such an extent as to be rendered unsafe. The termination date may be the date of the notice, or a later date (s 297).

In summary, a tenancy agreement or residency right may be terminated immediately where the rented premises, room, rooming house or caravan are unfit for human habitation, or unsafe.

What is 'unfit for human habitation'?

1. The procedure provided by the Act for declaring a house unfit for human habitation has been repealed (s 80).
2. Case law establishes that a house is unfit for human habitation when it is dangerous or detrimental to life or health. The risk to the tenant's health and safety must be more than mere inconvenience or aesthetic deficiencies.
3. The most common definition is that stated by the House of Lords in *Summers v Salford Corporation* [1943] AC 283: "If the state of repair of a house is such that by ordinary user damage may naturally be caused to the occupier, either in respect of personal injury to life or limb or injury to health, then the house is not in all respects reasonably fit for human habitation."

4. Premises may be unfit for any reason, including
 - disrepair or dilapidation,
 - defects in drainage, plumbing, lighting, ventilation or construction,
 - infection with a contagious disease,
 - unsanitary conditions likely to cause sickness to occupants.
5. The actual defect may be relatively small. In *Summers*, for example, inability to open the only window in a bedroom rendered the entire premises unfit for habitation, as this was necessary for adequate light and ventilation in the particular house.
6. Breach of building, health or occupancy regulations or requirements are relevant, but not decisive. It is necessary to consider all the circumstances, including the nature of the defect and the impact on the condition on the house as a whole.

Evidence required



7. Tenants should be cautious about serving a notice to vacate on the grounds of unfitness. As it allows immediate termination of a tenancy agreement, the provision is likely to be strictly construed by VCAT.
8. If the landlord disputes the claim that the premises are unfit for human habitation, the tenant will have to prove their claim at VCAT. Evidence such as photographs, witness statements or reports from trades people, engineers and building, health and safety inspectors should be obtained.
9. The defect would have to be very serious for the premises to be considered unfit for human habitation, so a detailed report from a suitably qualified expert (e.g. health, safety or building survey) should be obtained to substantiate the notice.

Process

10. If a tenant claims premises are unfit pursuant to ss 226, 227 or 238, the landlord may attempt to claim compensation for lease breaking. The tenant's evidence must be sufficient to establish on the balance of probabilities that the premises are in fact unfit for human habitation.
11. If a landlord serves a notice to vacate under s 245 and the tenant disputes the notice, the landlord must prove that the premises are unfit by adducing evidence of their own.
12. Section 272 is a unique provision in the Act as it deems a residency right to have ended if the room or rooming house is unfit for human habitation. The rooming house operator is not required to prove to VCAT that the premises are in fact unfit.
13. As the residency right has ended, the resident is occupying the room without consent and may be regarded as a trespasser. It is an offence however for the rooming house operator to attempt to take possession of a room otherwise than in accordance with the Act, or to interfere with the peace and comfort of the resident (s 273).

14. If a resident receives notification that the rooming house operator is claiming the residency right to be at an end based on s 272, and the resident disputes this, we recommend the resident:
- a. seeks an urgent interim restraining order so that the police can be called to prevent an illegal eviction;
 - b. contacts Consumer Affairs Victoria on 1300 55 81 81 and advises of the offence;
 - c. seeks legal advice on how to defend the rooming house operator's allegations and prepare for the return restraining order hearing.

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.

Tenants Union Legal Team

References:

Residential Tenancies Act 1997 ss 80, 226, 227, 238, 245, 272, 273, 275, 297.

Summers v Salford Corporation [1943] AC 283.

Hampel v South Australian Housing Trust [2007] SADC 64.