

Property Owner Ends the Tenancy

Tasmania tenants have rights under the Residential Tenancy Act, 1997. The Act contains requirements that your lessor must meet if they want to end your agreement. There are different procedures that the lessor must follow to end your tenancy depending on the type of agreement you have, and their reasons for wanting you to leave.

It's worthwhile finding out about your rights before hiring a moving van if you receive a Notice to Vacate. If you're unsure whether the lessor has met all the legal requirements for ending the tenancy, getting some independent tenancy advice may assist you to negotiate a better outcome.

Notice to Vacate

In all cases, the lessor (property owner or their agent) must give you a written notice if they want to end your tenancy. This is called a "Notice to Vacate".

The notice period in a Notice to Vacate ends on the "handover day". This is the day that you must hand the property back to the lessor. The required notice period that you should be given will vary depending on the reason the lessor want to end the agreement.

How should your lessor give notice?

A lessor's Notice to Vacate must include the following information:

- the date of serving the notice;
- the name of the tenant/s;
- the name of the owner/s;
- the residential premises to which the notice relates - the address;
- the reason why the notice is being issued
- the date on which the notice takes effect - handover day.

If the lessor sends you a Notice to Vacate by post, they must calculate the notice period to include the time it will take for delivery, usually two - three days.

Counting the days for notice periods

When you receive a Notice to Vacate, it's a good idea to check whether you have been given the correct period of notice. When calculating the notice period the lessor/agent should not include the day on which you receive the Notice to Vacate but should include the day that you must hand over the property.

If there's a mistake in a Notice to Vacate

You could argue that the Notice is invalid and a new one needs to be served if the lessor does not give you the correct time to move out. However, if the lessor makes application to the Magistrate's Court, Small Claims Division for an Order for Vacant Possession because of your failure to leave, the court can still grant an order terminating the agreement, if it believes it is appropriate to do so.

Do you have to continue paying rent?

After you have received a Notice to Vacate, your obligation to pay rent will continue until the tenancy has been properly terminated. Termination is usually on the handover day in the Notice to Vacate or the date you move out, whichever is the later.

Just because the lessor continues to accept rent from you does not mean they are obliged to let you stay on past the date stated in the Notice to Vacate (unless it is either the first or second notice for rent arrears). If you negotiate with a lessor or agent to remain in the premises, make sure this agreement is in writing and signed by all parties.

If you fail to leave

If you stay in the premises after the handover day in the Notice, the lessor can apply directly to the Magistrate's Court, Small Claims Division for an Order for Vacant Possession. If the Notice to Vacate

was given because you have breached (broken) your tenancy agreement, the lessor must be able to show that the breach was a serious one.

The Court has discretion in deciding whether or not to end the tenancy. It will take into account things like the seriousness of the breach, whether you took steps to fix the problem and whether the lessor has acted reasonably about the breach.

Reasons for ending a tenancy

The Residential Tenancy Act, 1997 states that a lessor can take action to end a tenancy for a number of reasons.

The following section of this fact sheet explains what you can expect and what you are entitled to if the lessor wants to end your agreement in a range or circumstances.

Failure to pay rent

If a Notice to Vacate is issued because you are behind in rent and it is the first or second notice within twelve months you can pay the arrears, this makes the notice void (not enforceable).

In order to make the notice void the arrears must be paid in full and must be paid during the period of the notice. A Notice to Vacate due to rent arrears must be for a period of 14 days.

The lessor must accept the arrears if you offer to pay them during the notice period.

If it is the third notice the lessor can still require you to vacate.

If you breach the agreement

If you have breached a term of the agreement, the lessor may give you a Notice to Vacate.

This notice must provide you with the reason why it has been issued.

If you do not act to remedy (make good) your breach of the agreement within the

Tenancy Facts

notice period, 14 days, the lessor/agent can apply to the Magistrate's Court, Small Claims Division for an Order of Possession.

Disputing a Notice to Vacate

If you disagree with the lessor/agent about the details specified in their Notice to Vacate you should let them know straight away. These notices should not be ignored. If you remain in the premises past the handover day specified in the Notice to Vacate, it may be only a matter of days before your lessor/agent applies to the Court for a hearing date for an Order of Possession.

You will be notified within 24 hours of the application about the date and time of the hearing.

Can the lessor end a fixed term tenancy?

A fixed term tenancy agreement is for a specific period of time. Commonly, fixed term tenancies are for periods of six or twelve months, but they can be for any agreed period.

The lessor cannot end a fixed term agreement before the last day of the fixed term unless:

- you have breached the agreement and the lessor has issued the proper notice;
- you agree to end the tenancy early;
- the Court gives a termination order.

At the end of a fixed term tenancy

If the lessor wants to terminate the tenancy at the end of the fixed term they must give you a Notice to Vacate. But, this notice can only be issued after the last day of the agreement.

If neither you nor the lessor give notice that you intend to end the tenancy when your fixed term agreement expires, your tenancy will automatically roll over into the first 28 days after the agreement.

This means that the same terms and conditions apply but, that either party to the agreement can give 14 days notice. The reason on the Notice to Vacate would be

that the lease agreement ended within the last 28 days.

After this 28 day period the agreement becomes one of no fixed period.

Lessor ends a no fixed period agreement

A no fixed period agreement has no time limit. The lessor can only end your no fixed period agreement for the following reasons:

- you have breached the agreement
- the property has been sold;
- the property is to be renovated;
- the property is to be used for another purpose.

If you have breached the agreement the notice period must be for 14 days.

If the notice is for one of the other three reasons the notice period must be for 28 days. The reason must be stated on the Notice to Vacate.

Sale of Premises

If you have a fixed term agreement, the lessor cannot ask you to leave because the premises are being sold. If you have a no fixed period agreement, the lessor can give you a Notice to Vacate that is for a period of 28 days.

The purchaser of the premises will be your new lessor and you are entitled to receive information regarding arrangements for paying rent and where to serve any notices. The purchaser should be bound by an existing fixed term agreement, and by the notice periods provided in the Residential Tenancy Act, 1997.

Mortgagee in possession

A mortgagee (bank, building society or other lending authority) may take possession of the premises if the lessor hasn't made their mortgage repayments.

If there is a mortgage over the premises, the lessor should have got the bank to consent to your tenancy. If the bank has given its consent, it must abide by your tenancy agreement and cannot ask you to leave early unless you are in breach of your agreement.

Problems arise when the lessor does not have the consent of the bank and you moved in after the mortgage was taken out. In that case, the bank could request that you leave the property immediately. At the time of writing this paper Consumer Affairs and Fair Trading argue that tenants should be given 28 days notice. If you find yourself in this position contact Consumer Affairs and Fair Trading and request that they contact the mortgage company.

If you move out due to the mortgage company repossessing the property you should lodge a claim with the Residential Tenancy Commissioner for the return of your bond money immediately.

Before you leave

At the end of the tenancy, it's a good idea to gather some evidence regarding the condition of the premises before you return the keys to the lessor/agent.

Photographs or statements from neighbours or friends who saw the conditions of the premises at the end of the tenancy could prove valuable if there is a dispute over the return of the bond. If you get any professional cleaning done, including carpet cleaning, make sure that you keep the receipts. If you need to lodge a claim for the return of your bond these receipts can be presented to support your claim.

USEFUL CONTACTS

Tenants Union of Tasmania Inc

1300 652 641

Consumer Affairs and Fair Trading

1300 654 499

(THIS FACTSHEET IS COMPILED WITH THE ASSISTANCE OF TENANTS' UNION QUEENSLAND)