



# NOTICE TO VACATE

## Information for Tenants

There are different procedures that the landlord/agent must follow depending on:

- a) the **reason** for wanting you to leave
- b) the **type** of lease, which is either:
  - (i) **FIXED** term: has an agreed end date, or
  - (ii) **NON-FIXED** term: has no end date

## Reasons for a Landlord/Agent to End of Tenancy

### 1. Tenant breaches the lease agreement

FIXED and NON-FIXED term  
MINIMUM NOTICE: 14 DAYS

If you breach a term of the lease agreement, the landlord/agent may issue a Notice to Vacate.

A tenant has fourteen (14) days to comply with the lease agreement (remedy the breach). If the tenant does comply then the Notice to Vacate ceases to have effect.

**IF YOU FIX THE PROBLEM WITHIN 14 DAYS THEN YOU CANNOT BE EVICTED**

### 2. Failure to pay rent

FIXED and NON-FIXED term  
MINIMUM NOTICE: 14 DAYS

If a Notice to Vacate is issued because you have rent in arrears and it is the first or second notice within twelve (12) months, you can pay the full arrears before the effect date and the notice ceases to have effect. The landlord/agent must accept the arrears if you pay them during the notice period. If it is the third Notice To Vacate for being behind in rent in a 12 month period, the landlord/agent can require you to vacate.

**IF YOU CATCH UP ON THE RENT WITHIN 14 DAYS THEN YOU CANNOT BE EVICTED**

**UNLESS**

**IT IS YOUR THIRD NOTICE IN 12 MONTHS**

### 3. End of the fixed term tenancy

FIXED term only  
MINIMUM NOTICE: 14 DAYS

The landlord/agent must issue a Notice to Vacate if they want you to leave at the end of a fixed period lease. A Notice to Vacate for this reason can only be issued within 28 days of the end date of the lease (between 28 days before the end date and 28 days after). They must give you notice of at least 14 days or until the end date on your lease, whichever is longer.

### 4. The premises have been repossessed

FIXED and NON-FIXED term  
MINIMUM NOTICE: 28 DAYS

A mortgagee (bank, building society or other lending authority) may take possession of the premises if the landlord hasn't paid their mortgage repayments. Once the mortgagee has taken possession they are legally entitled to give 28 days notice even if you have a fixed term lease.

### 5. Sale, major renovation or change of use of premises

NON-FIXED term only  
MINIMUM NOTICE: 28 DAYS

If you have a NON-FIXED term lease, then you can be given 28 days to leave the property if it is to be sold (not just an intention to sell), it is being renovated (major or structural and requires tenants to leave) or the use of the premises is changing.

**IF YOU ARE ON A FIXED TERM LEASE THEN YOU CANNOT BE EVICTED IF THE PREMISES ARE SOLD, RENOVATED OR CHANGING USE**

### 6. Substantial nuisance at the premises

FIXED and NON-FIXED term  
MINIMUM NOTICE: 14 DAYS

A landlord/agent can issue a Notice to Vacate if a tenant causes problems of a substantial nature. Usually a substantial nuisance is one that cannot be remedied. Having too many parties can be remedied, violence involving neighbours cannot.

Also note that landlord/agents or tenants may apply to the Court for immediate termination of an agreement if damage or injury has been caused or is likely to be caused.

## Format of a Notice to Vacate

To be **evicted** you must be **given a Notice to Vacate** and it must be in **writing**.

A Notice to Vacate **must** include the following information:

- the date of serving the Notice;
- the name of the tenant/s;
- the name of the landlord/s (owner/s);
- the address of the premises;
- the reason why the Notice is being issued;
- the date on which the Notice takes effect.

The notice period in the Notice to Vacate ends on the date of effect. This is the day the property is to be handed back to the landlord/agent.

In calculating the notice period, the landlord/agent should not include the day on which you receive the Notice but it should include the date the Notice takes effect.

### What if there is a mistake in the Notice?

You can argue that the Notice is invalid and a new one needs to be issued. A new Notice to Vacate restarts the notice period.

### Do you continue paying rent?

You are obligated to pay rent until the tenancy is terminated. Termination is usually on the date of effect in the Notice to Vacate or the date on which the tenant moves out, whichever is the later.

If the landlord/agent continues to accept rent this does not mean they are obliged to let you stay on past the Notice effect date (unless it is either the first or second notice for rent arrears).

You can negotiate with the landlord/agent to remain in the premises or rectify the problem e.g. no loud parties. If this is the case, make sure the agreement is in writing and that it is signed by all parties involved.

### If you fail to leave

If you stay in the premises after the date of effect in the Notice, the landlord/agent can apply to the Magistrates Court for an Order for Vacant Possession. If the Notice was issued because you have breached (broken) your tenancy agreement in some way, the landlord/agent must be able to show that this has not been remedied.

### Before you leave

Evidence such as dated photographs and video footage along with witness statements on Statutory Declaration forms and receipts in relation to cleaning the premises at the end of your tenancy could prove valuable if there is a dispute with the return of your bond.

## USEFUL CONTACTS

Tenants' Union of Tasmania Inc  
166 Macquarie Street Hobart  
☎6223 2641 or 1300 652 641  
[www.tutas.org.au](http://www.tutas.org.au)

Residential Tenancy Commissioner  
(Consumer Affairs & Fair Trading)  
☎1300 654 499

Legal Aid Commission of Tasmania  
☎1300 366 611

Private Rental Tenancy Support Service  
☎1300 729 400

Anti Discrimination Commission  
☎6224 4905 or 1300 305 062

Women's Legal Service  
☎1800 682 468

Hobart Community Legal Service  
☎6223 2500

Launceston Community Legal Service  
☎1800 066 019

North West Community Legal Service  
☎6424 8720

# Tenants' Union of Tasmania

The information in this fact sheet is not legal advice. It is intended as a guide only. It applies only to legislation current in the state of Tasmania, Australia as at 01 January 2009. For information regarding a specific tenancy problem, please phone the Tenants' Union on (03) 6223 2641 or 1300 652 641. The Tenants' Union of Tasmania Inc accepts no responsibility for actions based on this information, nor for actions based on electronic translations of this.