

Eviction Notice? Being Evicted?



NOTICE TO VACATE

Information for Tenants

A landlord or agent can end a lease for 7 main reasons as explained below. The landlord or agent will serve the tenant with a Notice to Vacate (Eviction Notice).

VALID REASONS FOR A NOTICE TO VACATE

1. TENANT BREACHES THE LEASE AGREEMENT

Minimum Notice: 14 clear days

If you breach a term of the lease agreement (including the Residential Tenancy Act), the landlord/agent may issue a Notice to Vacate. A tenant has 14 days to comply with the lease agreement (remedy the breach). If the tenant complies then that Notice to Vacate ceases to have effect.

In essence, if you fix the problem within 14 days then you cannot be evicted from that notice.

2. FAILURE TO PAY RENT

Minimum Notice: 14 clear 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 even if you catch up.

To summarise, 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

*Minimum Notice: 14 clear days
changing to 42 clear days*

The landlord/agent must issue a Notice to Vacate if they want you to leave at the end of a fixed term lease (an agreement with an end date). 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.

Once you are 28 days past the end date of the lease you move on to a non-fixed term lease and the landlord cannot then use this reason to evict you.

For all new leases after 1st October 2014 and all leases after 1st October 2015: The landlord will have to give at least 42 clear days notice before the end of the fixed term tenancy, so long as the notice is received between 60 days before the end date of the lease. Tenants not receiving a Notice to Vacate will rollover onto a non-fixed term lease immediately following the end date of the lease (formerly 28 days after the end date).

4. THE PREMISES HAVE BEEN REPOSSESSED

*Minimum Notice: 28 clear days
changing to 60 clear 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.

For all new leases after 1st October 2014 and all leases after 1st October 2015, the minimum notice period is 60 clear days.

5. SALE, SIGNIFICANT RENOVATION, CHANGE OF USE OR OWNER'S FAMILY USE OF PREMISES

*Minimum Notice: 28 clear days
changing to 42 clear days*

If you have a **NON-FIXED** term lease (ie no end date for your 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 (no longer a rental property). If you are on a **FIXED** term lease then you cannot be evicted using this reason.

For all new leases after 1st October 2014 and all leases after 1st October 2015: the minimum notice period is 42 clear days. Also, 42 clear days notice may be given if the dwelling is to be used by an owner's partner, son, daughter or parent, a parent of the owner's domestic partner or a person who is substantially dependent on the owner.

6. NEW: HOUSING TASMANIA ONLY EVICTIONS

Minimum Notice: Varies from 14 to 90 clear days

For all new leases after 1st October 2014 and all leases after 1st October 2015 associated with Hosing Tasmania owned properties, there are four new reasons to evict tenants (with notice periods in brackets):

- a) Exceeding income and asset thresholds (90 clear days). To view the thresholds see the Consumer Affairs and Fair Trading website.
- b) Not requiring all bedrooms in a 4 bedroom property and alternative premises are offered (28 clear days)
- c) Not requiring special facilities in a modified premises and alternative premises are offered (28 clear days).
- d) Being away from the premises for more than 8 weeks continuously without approval (14 clear days).

However, eviction must not result in unreasonable financial or social disadvantage to the tenant.

7. SUBSTANTIAL NUISANCE AT THE PREMISES

*Minimum Notice: 14 clear days
Can be immediate if through court*

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 the other party to the agreement:

- causes, permits or is likely to cause damage to the premises or neighbouring premises, or
- causes or is likely to cause physical injury to them or occupants of neighbouring premises

FORMAT OF NOTICE TO VACATE

For a Notice to Vacate to be **valid** it must be in **writing** and contain **all** of the following:

1. Date of serving the Notice;
2. Name of the tenant/s;
3. Name of the landlord/s;
4. Address of the premises;
5. Detailed reason(s) why the Notice is being issued – not simply a restatement of the Section breached;
6. Date on which the Notice takes effect.

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.

If there is a mistake in the Notice to Vacate, 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 and it cannot be backdated.

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).

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.

IF YOU DON'T LEAVE

Even after the notice period has ended, if you want to stay, the landlord/agent still must apply to the Court to see if their Notice to Vacate is valid before eviction can occur and this has several steps:

1. The landlord/agent must apply to the Magistrates Court to get the civil matter heard.
2. The tenant is notified of the hearing date in writing.
3. The matter goes to hearing where you as tenant can put your case. If you win, you stay and if you lose the Court will decide how long you can remain in the property.
4. A Bailiff will enter the premises to evict you and change the locks. **It is illegal for a landlord or agent to change the locks without a Court order.**

USEFUL CONTACTS

Tenants' Union of Tasmania Inc
166 Macquarie Street Hobart
☎6223 2641 or 1300 652 641
www.tutas.org.au

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

Legal Aid Commission of Tasmania
☎1300 366 611
Housing Connect
☎1800 800 588

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