



DON'T PANIC

**A TENANTS' GUIDE
TO RENTING IN TASMANIA**

2nd Edition



TENANTS' UNION OF TASMANIA

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International Union of Tenants MEMBER



National Association of Tenant Organisations MEMBER

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DISCLAIMER

The information in this booklet is not legal advice. It is intended as a guide for residential tenants and only applies to legislation current in Tasmania as at 1 December 2013. For information regarding a specific tenancy problem please contact the Tenants' Union. The Tenants' Union of Tasmania Inc. accepts no responsibility for actions based on this information, nor for actions based on electronic translations.

NEW LEGISLATION

There are new rules for residential tenancies that will come into effect over the next few years. Sections affected by the new legislation will display the icon  with the changes outlined at the back of this booklet. At the time of printing it is not known when each of the changes will begin, but the Tenants' Union website (www.tutas.org.au) will have up-to-date details.

YOUR LEASE AND THE LAW

When a tenant and a landlord/agent agree to exchange payment for residential accommodation a **lease agreement** is formed. In addition to any rules or regulations you agree to, most residential tenancies are bound by the *Residential Tenancy Act 1997* (in this publication it is called the *Act*). In other words, for most lease agreements, there are two sources of regulations: your agreement with the landlord/agent and the *Act*.

Where your agreement with the landlord/agent contradicts the *Act*, the *Act* prevails. Also, neither you nor the landlord/agent can agree to opt-out of parts of the *Act*.

WHO ISN'T COVERED BY THE ACT

The *Act* does not apply to:

- mortgage agreements
- some agreements where the tenant is also a part owner of the company that owns the premises
- holiday premises or residential premises that are used for a holiday for 3 months or less
- hotels and motels that are not boarding premises,
- some boarding premises with less than 3 'rooms'
- hospitals, nursing homes and clubs
- residential care premises (found under the *Aged Care Act 1997*)
- residential contracts within the meaning of the *Retirement Villages Act 2004*
- most sub-leases (except NRAS approved dwellings)
- crisis and homeless accommodation where the lease agreement is for 3 months or less
- most accommodation that is part of an education institution (except NRAS approved dwellings)

Even if the *Act* doesn't apply, your lease agreement may still be valid. However, much of this booklet discusses application of the *Act*.

TYPES OF LEASES

WRITTEN AND VERBAL

A lease agreement can be written, spoken or a combination of both. If written, it must be printed in 10 point font or larger and you must be given a copy within 14 days of the start of the agreement. It is harder to prove verbal conditions of a lease, so try to get everything in writing. Costs incurred in the preparation of a lease agreement are to be paid by the landlord/agent.

FIXED AND NON-FIXED TERM

Lease agreements can be fixed term or non-fixed term, and the difference changes the rules for ending a lease. If your lease agreement has an end date it is a fixed term lease. If there is no end date you are under a non-fixed term lease. Many verbal lease agreements have no end date but this does not mean the landlord can evict you at any time. They must have valid reasons (see Ending a Tenancy). At the end of a fixed term lease you do not need to vacate the premises unless you have been given a valid Notice to Vacate or you wish to leave. If the landlord/agent does not give a valid Notice to Vacate within 28 days of the end date, you move on to a non-fixed term lease with all conditions of the original lease remaining. **1**

CO-TENANCY AND SUBLETTING

Two or more tenants with a shared relationship to the landlord/agent are considered **co-tenants**. Often you can tell if you are in a co-tenancy if there is more than one person listed on the lease as a tenant. Co-tenants are joint and severally liable for paying the rent and damage meaning the landlord/agent may come after any of the co-tenants for the full rent or damage even though another tenant moves out or is responsible for the damage. Co-tenants can then sort out any debts between themselves.

Sub-tenants are those with a lease agreement with the 'head' tenant(s) and generally have no direct relationship with the landlord/agent. Sub-tenancies are permitted under the following two conditions: 1) the 'head' tenant(s) must occupy the premises or sub-let to one of

their employees and 2) the 'head' tenant(s) must get consent from the landlord/agent. The landlord/agent must not unreasonably withhold consent. Sub-tenancies are not covered under the *Act* but an agreement will be subject to general contract law.

BEGINNING A TENANCY

APPLYING FOR PROPERTIES

Many landlords and agents require a great deal of personal information. You can choose not to disclose requested information but you may be put at a disadvantage. Discrimination based on age, race, religion, parental status, sexual orientation, gender, disability or irrelevant criminal record is against the law. A landlord/agent does not have to give a reason for rejection of an application so it may be difficult to ascertain if discrimination has occurred but if you think you have been discriminated against contact the Anti-Discrimination Commissioner (1300 305 062).

If your application is successful then you have the choice of whether to accept or decline the property.

Note that people under the age of 18 may enter into lease agreements. **2**

TENANCY DATABASES

Residential tenancy databases (aka blacklists) are more commonly used on the mainland than in Tasmania. Regulations in Tasmania mean that the landlord/agent must inform applicants if they are using a database at the time of the application being made. They must also inform the applicant if there is personal information on the database.

Tenants can only be listed on databases for breaches of previous leases that still require the tenant to repay money or for evictions from an immediate termination through the Court. Generally speaking, information can only be kept for 3 years.

DEBT COLLECTION AGENCIES

Landlords/Agents are barred from accessing credit files from credit reporting agencies such as Tasmanian Collection Services under the *Privacy Act*. However, they can ask you to provide them with your credit file.

APPLICATION FEES

A prospective landlord/agent is **not permitted** to charge application fees, waiting list fees, inspection fees, key deposit or any other fees associated with applications. They may only receive three types of payment prior to entering into a lease agreement:

- Rent in advance
- A holding fee
- Bond

HOLDING FEES

A **holding fee** may be paid by a prospective tenant to hold the premises for more than 7 days. Sometimes a holding fee can be confused with a bond (security deposit) or rent in advance so ensure it is clear what it is you are paying for.

BOND

In most circumstances, bonds are held with the Rental Deposit Authority (RDA) **not** the landlord. The maximum bond allowable is four times the weekly rent. Bond is to not be charged for boarding premises. For tenants finding it difficult to raise the bond, assistance is available (see Contacts).

PAYING A BOND

If you are renting from an agent, you can pay the bond directly to them and they will lodge it with the RDA. Otherwise tenants need to get a Bond Lodgement form signed by the landlord and take it with the bond amount to a Service Tasmania branch or post it to:

Rental Deposit Authority
GPO Box 1244
Hobart TAS 7001

You will receive a receipt that is often required to be shown to the landlord in order to get access to your property.

TRANSFERRING A BOND

Tenants moving in or out may need to fill out a Tenant Transfer Form. Generally incoming tenants lodge the form with the RDA through Service Tasmania and pay their bond to the outgoing tenant.

CONDITION OF THE PROPERTY

The landlord/agent must maintain the premises in the same condition as at the start of the lease agreement apart from reasonable wear and tear. You should presume that everything functions as intended unless you are told otherwise or it is reasonable to assume that it didn't function as intended. **3**

CONDITION REPORTS

A **condition report** is evidence describing the condition of the property at the beginning of occupancy that can be relied upon to decide damage and bond disputes. If a landlord/agent requires a bond, they must provide two copies of a condition report stating the condition on or the day before the tenant occupies the premises. You must return one signed copy to the landlord/agent within 2 days with any disagreements clearly noted. You should also take date-marked photos prior to moving in.

DURING THE TENANCY

CHARGES ALLOWED DURING THE TENANCY

The landlord/agent may only charge the following during the term of a lease agreement:

- Rent in advance
- Water charges (see below)
- Compensation for tenant damage

UTILITY CONNECTIONS AND CHARGES

Tenants are usually responsible for telephone and electricity connections and service charges such as line rental, calls and power used, while infrastructure repairs associated with these services are the landlord/agent's responsibility. The landlord/agent cannot directly charge tenants for electricity or telephone and must include it as part of the rent (except in boarding premises).

WATER AND SEWERAGE

Tenants can only be charged for the **metered** component (fee per unit) of water consumption. All other charges associated with water and sewerage are to be paid by the landlord/agent. Tenants should ask to see the bill.

Tenancies on shared meters cannot be metered for their consumption accurately and therefore cannot be charged for any part of the water and sewerage.

RENT

RENT IN ADVANCE

Rent is required to be paid in advance during the term of the lease. In other words, you pay for time that you will be in the property, not the time you have already been in the property. The amount you have to be in advance depends on your **payment period** which is how often you have to pay rent according to the lease. A payment period cannot exceed four weeks (or two weeks for boarding premises) and therefore it is against the *Act* to charge by the calendar month. A payment period cannot be changed unless all parties to the agreement agree to it.

RENT PAYMENT AND RECEIPTS

If you pay by cash or cheque, you must receive a receipt with the date paid, tenant's name, address of the premises, amount paid and the period that the rent is paid for. Electronic payment does not require a receipt as it usually leaves an electronic 'trail'. A landlord/agent cannot change the method of payment during a lease without your consent. **4**

RENT INCREASES

The *Act* states that rent increases are allowed where 1) there is a written lease agreement that allows for an increase or 2) where there is no written lease agreement. In addition, the Commissioner has also allowed rent increases during non-fixed term leases. For a rent increase to be valid it must be in writing, state the new rent and the day that the rent increase takes effect. There must be at least 60 clear days notice and there must be at least 6 months between increases.

If you think the increase is unreasonable you may challenge it in Court. In deciding if an increase is unreasonable the Court takes into account the general level of rents for comparable premises in the locality and any other relevant matter. If you wish to challenge it in Court you can contact the Tenants' Union for further advice. **5**

RENT ARREARS

Rent arrears occur when you have not paid rent for the period you are in the property. However, it is not the same as the rent in advance period. For example: You pay rent fortnightly in advance and the next payment period is for April 1st to April 14th. If you do not pay the rent until April 5th, you would have been in arrears from April 1st until April 4th. Once paid you would no longer be in arrears until April 14. If you regularly paid the rent five days late, you would be breaching the rent in advance clause in the *Act*.

It is a condition of all lease agreements that you must pay rent when it falls due. Should you get behind in rent the landlord/agent may give you a **Notice to Vacate** (eviction notice) for rent arrears. This notice must specify the amount of arrears owing at the time the notice is provided.

A Notice to Vacate for rent arrears must give you at least **14** clear days notice to solve the problem. This allows you:

1. to pay the arrears owing, thus remedying the problem (and therefore no further action can be taken) or
2. you can vacate the property (note that any rent arrears may be taken from your bond).

It is best to pay the rent arrears plus the rent in advance. If you do not pay the rent arrears within 14 days of receiving the Notice to Vacate or during a 12 month period you get **three** Notices to Vacate for rent arrears, the landlord/agent is entitled to apply to the Court to evict you even if you pay the arrears owing.

REPAIRS & MAINTENANCE

RESPONSIBILITY FOR DAMAGE AND CLEANLINESS

Landlord/Agent Responsibilities

The landlord/agent must maintain the rental premises in the same condition as existed at the beginning of the tenancy except for reasonable wear and tear. An example of reasonable wear and tear is the wearing of flooring as a result of normal household traffic. It is reasonable to assume that everything functions as intended at the start of the lease unless you were told otherwise or it was reasonable to assume that you could know.

Example: When inspecting a dwelling without power, it is reasonable to assume that all power points work unless you are informed otherwise by the landlord/agent or there is visible evidence showing otherwise.

Until the beginning of the new legislation there are no minimum housing standards under the *Act* (except that the dwelling must have security devices necessary to keep the premises secure and be fitted with smoke alarms). This means that a landlord/agent may not be obliged to carry out repairs to any problems that existed before the tenancy commenced.

The landlord/agent must carry out repairs that do not arise from the fault of the tenant or visitors of the tenant. An agent must ensure premises are maintained and repairs are done even if the owner is uncontactable or unwilling to meet obligations.

Tenant Responsibilities

Tenants must keep the property clean and must not allow or cause intentional damage to occur to the property. If repairs are required you must notify the landlord/agent within 7 days of the damage occurring (whether your fault or not). Upon vacation, you must leave the premises as close as possible, apart from reasonable wear and tear, to the condition as stated in the condition report, or if there is no condition report, the state of the property at the beginning of the tenancy.

There are three types of repairs: Urgent, Emergency and General.

URGENT REPAIRS

Urgent repairs arise when an **essential service** ceases to function. Essential services include: water, sewerage, electricity, cooking stove, hot water service, removal of grey water and any working heating appliances supplied with the property. Essential services do not include electrical fuses, light globes, tubes or tap washers, although the failure of these may fall into emergency or general repairs (discussed below).

A tenant must inform the landlord/agent of the need for the urgent repair as soon as practicable, and in turn the landlord/agent must have the essential service restored as soon as practicable.

If the landlord/agent is unable to be contacted, or fails to organise the repairs within 24 hours of being notified, a tenant may authorise the repairs to be done by a **nominated** repairer (someone who is nominated by the landlord/agent to do repairs), or if there is no nominated repairer, a **suitable** repairer (someone who holds a licence [if necessary] to carry out the relevant repairs and is ordinarily employed to do so). Repairs are only to be carried out to the extent that the essential service becomes functional again.

The landlord/agent is to pay the repair bill if the repairs are done by the nominated repairer, and the tenant is to settle the bill if the repairs are carried out by a suitable repairer.

If the repairs are carried out by a suitable repairer the tenant must provide the landlord/agent with:

- a statement from the repairer, of the apparent need for repair,
- a copy of the account, and
- a copy of the receipt.

The landlord/agent is to reimburse the tenant within 14 days. If the landlord/agent disputes their obligation to reimburse the tenant, they may apply to the Magistrates Court for the matter to be determined.

A landlord/agent may only dispute the repair on grounds that:

- The landlord/agent was not notified of the need for repair,
- The damage arose as a result of the fault of the tenant, or
- [For urgent repairs] the tenant organised the repairs within 24 hours of notifying the landlord/agent of the need for the repair and the repairs were carried out during that time. **7**

EMERGENCY REPAIRS

Emergency repairs arise when damage occurs to the property and the damage is likely to worsen or cause the property to deteriorate. The tenant must inform the landlord/agent as soon as practicable. Like urgent repairs (above), if a landlord/agent cannot be contacted or fails to arrange the repairs, and the damage is likely to worsen and cause the property to deteriorate, the tenant may authorise either a nominated or suitable repairer to carry out the repairs.

The repairs should only be carried out to the extent that they prevent further damage or deterioration to the property. The procedure for the tenant seeking reimbursement of the cost of a suitable repairer is the same as for urgent repairs (discussed above).

GENERAL REPAIRS

General repairs are repairs that are not as serious as urgent or emergency repairs. A tenant is required to inform their landlord/agent of the need for any repairs within 7 days of that need arising.

The landlord/agent is then required to carry out the repairs within **28** days (or in the case of boarding houses, 7 days). However, the landlord/agent is only required to repair problems that are not the fault of the tenant. If you want to do the repairs yourself, you must get the

permission of the landlord/agent.

When requesting repairs and maintenance it is always best to do so in writing using our Notice for Repairs form that can be found on our website (www.tutas.org.au) under *Repairs and Maintenance*. **8**

COMMON PROBLEMS

MOULD

Mould needs moisture to grow. Good heating and extractor fans, regular airing and gloss paint can minimise indoor moisture and therefore mould. If the mould is caused by you, the best way to get rid of it is a vinegar or alcohol solution (1 part vinegar/alcohol to 4 parts water). If the mould keeps coming back despite your best efforts, it is likely that it is a structural problem and is a landlord/agent responsibility. You can seek general repairs (above) that would fix the problem such as extractor fans, efficient heating or window locks to allow airing. Alternatively, you can contact your local council for an inspection from an Environmental Health Officer. They can compel landlords/agents to fix problems under the *Public Health Act* even if it was a problem prior to you moving in.

For more information go to the Factsheets page on our website (www.tutas.org.au/factsheets). **9**

ASBESTOS

Asbestos is a potentially harmful substance found in some older building materials. High concentrations and regular exposure to asbestos can lead to scarring of lung tissue, lung cancer and mesothelioma. Internal cement sheet walls or ceilings containing asbestos that are in good condition and have been painted or sealed in an appropriate manner do not pose a health risk. External cement roofs and wall claddings containing asbestos do not need to be replaced unless they are broken or the surfaces have deteriorated.

If you are concerned about any asbestos in your home, or if you think you may have asbestos in your home but are unsure, you should contact your landlord/agent and ask them to contact a licensed asbestos professional who can assist in identification and removal. If the landlord/agent will not

help, then you should contact your Environmental Health Officer at your local council.

PEST INFESTATION

Pest infestations that are not the fault of the tenant are a landlord/agent responsibility. If the pests become a safety issue you can receive assistance from the Environmental Health Officer at your local council.

WHAT IF THE LANDLORD/AGENT WILL NOT DO REPAIRS?

Do not stop paying rent because the landlord/agent will not carry out repairs. If you do you run the risk of receiving a Notice to Vacate (eviction notice) for breaching your lease agreement. The options available to you are:

Option 1: As detailed above, in the case of urgent and emergency repairs a tenant may be able to authorise a repairer to fix the problem. With general repairs, it is a good idea to talk to the landlord/agent and remind them that there is an issue that needs to be fixed.

Option 2: A tenant may apply to the Magistrates Court for an order that the landlord/agent carry out repairs that do not arise from the fault of the tenant. For information about, and assistance with filing a claim in the Magistrates Court you should contact the Tenants' Union.

Option 3: If a landlord/agent does not carry out urgent and emergency repairs within a practicable time or general repairs within 28 days of being notified, you may serve a Notice to Terminate to end your agreement. A Notice to Terminate must give at least 14 clear days notice and also comply with certain formalities under the *Act* in order to be valid, so if you are considering serving a Notice to Terminate it may be a good idea to contact the Tenants' Union for assistance. **10**

PRIVACY

As a tenant you are entitled to quiet enjoyment of the property that you are renting. Quiet enjoyment means that the landlord/agent must not interfere with your peace, comfort or privacy in using the premises. If they do, they can be fined up to \$6,500.

The landlord/agent is not responsible for any disturbances by your neighbours unless they also rent from your landlord/agent. Your local council may be able to help if you have complaints regarding health and safety.

NOTICE PERIODS FOR LANDLORD/AGENT ENTRY

A landlord/agent may enter the rental premises **without notice** only where it is reasonably believed that:

- The tenant is ill or injured and unable to give permission.
- Damage has occurred to the premises.
- A denial of immediate access is likely to result in damage to the premises.
- There is a risk to the tenant or another person present on the premises.
- The premises have been abandoned.

A landlord/agent may enter the residential premises between 8am and 6pm without tenant permission by giving **24 hours notice**:

- To meet commitments under the lease agreement.
- If it is reasonably suspected that the tenant has failed to comply with any provision of the lease agreement.
- To ensure repairs have been properly carried out.
- Except in the case of boarding houses, to carry out an inspection within 1 month of the commencement of the lease agreement.
- To carry out routine inspections; once a month in the case of boarding premises, or once every 3 months in any other case.

A landlord/agent may enter the residential premises without tenant permission by giving **48 hours notice**:

- To show one prospective tenant (and anybody accompanying the prospective tenant) where a lease agreement is due to expire within

the next 28 days, or where a Notice to Vacate or Notice to Terminate has been given.

- To show one prospective purchaser (and anybody accompanying them) if the premises are for sale.

This may occur only once per day, for a maximum of five days a week between 8am and 6pm.

OPEN HOMES

A landlord/agent cannot hold an open home for sale or re-letting unless they get your written permission. If you have contents insurance check with your insurer about special conditions they may have associated with open homes before granting permission.

PHOTOGRAPHS

A landlord/agent or one of their representatives requires your consent to take images inside your property's boundaries.

Landlords/agents breaching the above provisions can be fined up to \$6,500. If you wish to report a breach contact Consumer Affairs and Fair Trading (1300 654 499). **11**

LOCKS AND SECURITY

The landlord/agent must ensure that there are security devices (such as locks) necessary to secure the premises throughout the lease agreement. Changes to security devices during the lease agreement must have consent of all parties (unless there is Court approval). If there is agreement then all parties must be given keys, opening devices or codes to open the security device. **12**

ALTERATIONS TO THE PREMISES

Tenants need written permission to add fixtures or make any alteration or addition to the premises. You can remove fixtures such as light fittings except where it will cause damage and you will need to return them to their position at the end of the lease unless you have permission from the landlord/agent. If damage occurs from removing a fixture, the tenant must notify the landlord/agent. The landlord/agent may then allow you to fix the damage or compensate them for the damage.

USE OF PREMISES

Premises cannot be used for unlawful purposes or any purpose other than residential purposes, and tenants cannot cause or permit a nuisance to be made on or from the premises.

PETS

Tenants may not keep pets unless they have landlord/agent permission (guide dogs excepted). It is best to get evidence of any agreement.

SMOKE ALARMS

All Tasmanian residential tenancies are required to be fitted with a working smoke alarm. The landlord/agent is responsible for the provision of smoke alarms.

From **1st May 2013** until **30 April 2016**, smoke alarms can be battery powered (9V or 10 year non-removable), or mains powered, provided they comply with the Australian Standard.

From **1st May 2016**, smoke alarms must be powered by a 10-year non-removable battery or mains power.

The legislation also includes requirements for the location of smoke alarms. See the Consumer Affairs and Fair Trading website (www.consumer.tas.gov.au/renting/smoke_alarms) for details.

HOLDING POSSESSIONS (DISTRESS)

A landlord/agent is not permitted to take or hold goods owned by you to force you to pay rent (in legal terms this is known as distress).

ENDING A TENANCY

BY MUTUAL AGREEMENT

Both tenant and landlord/agent can mutually agree to end a lease agreement at any time with any notice period. You should get this in writing, especially if it changes the conditions of an existing lease.

Tenants can leave the premises on the final day of a fixed term lease agreement without giving notice, but it is better if tenants can notify the landlord or agent in advance if they plan on doing this.

LANDLORD/AGENT ENDING THE LEASE

NOTICE TO VACATE

There are 6 main reasons a landlord/agent can give tenants a Notice to Vacate (Eviction Notice).

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 to 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

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. **13**

4. The premises have been repossessed

Minimum Notice: 28 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. **14**

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

Minimum Notice: 28 clear days

If you have a **NON-FIXED** term lease (ie no end date for you lease), then you can be given 28 days to leave the property if it is to be a) sold (not just an intention to sell), b) renovated (major or structural and requires tenants to leave) or c) 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. **15**

6. Substantial nuisance at the premises

Minimum Notice: 14 days (unless 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. **16**

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

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.

COURT

Even after the notice period has ended, if you want to stay, the landlord/agent must still 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.

TENANT ENDING THE LEASE

If you wish to leave prior to the end of your lease agreement without the consent of the landlord/agent – and we suggest talking to them first – you can use four methods:

COURT

You can apply to the Magistrates Court for the lease to be terminated on the following grounds:

- The landlord/agent has caused or permitted or is likely to cause or permit serious damage to the premises or any neighbouring premises
- The landlord/agent has caused or is likely to cause physical injury to tenants or people occupying neighbouring premises

In addition, the Court may terminate or change the tenants on a lease agreement in accordance with the Family Violence Act when a tenant has an Apprehended Violence Order (AVO) made against another tenant.

NOTICE TO TERMINATE

You can also use a Notice to Terminate to end your lease for the following reasons:

- The landlord/agent has failed to carry out repairs (that are not the fault of the tenant) within the time prescribed under the *Act* or Lease. However if the problems have been fixed after the time prescribed but before you serve the Notice to Terminate then you cannot use this reason. In other words, the problem must still exist to issue a valid Notice to Terminate.
- The landlord/agent has breached provisions of the *Act* or the Lease
- If the Lease is for a non-fixed period (has NO end date) and the tenant wishes to end the Lease.

Tenants must give **14 clear days** notice (except for boarding premises where it is 2 clear days). Rent is to be paid until you vacate the premises. In the case of **repairs**, if a landlord/agent fixes the problem during the notice period, the tenant may still terminate the agreement at the end of the notice period.

For all **other breaches**, if the landlord/agent fixes the problem within the notice period, then the Notice to Terminate is of no effect and the lease continues.

A Notice to Terminate **must** include the following (except for boarding premises):

1. Date of service of the Notice
2. Landlord/Agent name
3. Tenant/s name
4. Premises to which the Notice applies
5. Reason/s for the Notice – not just the Section breached
6. Date that the Notice takes effect

Exiting tenants should keep all paperwork associated with the tenancy in case the Notice to Terminate or Bond is disputed by the landlord/agent. **17**

FRUSTRATION

A lease agreement is frustrated when it becomes impossible to carry out the purpose of the lease. Examples may include:

- premises being destroyed by natural disaster
- premises deemed unfit to live in by an Environmental Health Officer under the *Public Health Act*.

The outcome of a frustrated lease is that you may be freed of obligations and the lease ends. For further advice on this sometimes complex issue contact the Tenants' Union.

BREAKING THE LEASE

If you need to leave and the methods above have been exhausted, you will need to break the lease. Under the *Act*, if you wish to leave before the end of a fixed term lease you are responsible for rent until the end of the lease or until new tenants can be found.

The landlord/agent is to take all reasonable steps to find a new tenant for the property. The steps include offering the property at the same rent with the same conditions of the current lease using suitable means of advertising (usually the same advertising they used to get you).

You can reduce costs by finding potential tenants yourself and putting them in touch with the landlord/agent. If you think that the landlord/agent is not taking all reasonable steps to re-let the property you may be able to stop paying rent. In this situation you should contact the Tenants' Union.

Tenants are also liable for all reasonable costs involved in finding a new tenant. However, the landlord/agent can only charge you for actual, itemised costs (not a break lease fee) and you will only be liable for a percentage of the overall fees depending on the percentage of time left on your lease. For example, if you have 3 months left on a 12 month lease, you have 25% of your lease to go, so you are liable for 25% of costs associated with breaking the lease (plus rent).

DISPOSAL OF GOODS

Goods that appear to be abandoned by you may be dealt with by the landlord/agent in the following ways:

- If they appear to have no value, the landlord/agent may dispose of them
- If they appear to have a value under \$300, they may be sold
- If they appear to have a value of \$300 or more, the landlord/agent must apply to the Court to sell them

The proceeds are to be dealt with:

- Firstly, to settle debts owed to the landlord/agent
- Secondly, in payment of reasonable costs of the sale
- Thirdly, any balance is to be kept in an interest bearing account for you for 6 months. If not claimed after 6 months, the proceeds become the property of the Residential Tenancy Commissioner

GETTING THE BOND RETURNED

At the end of a tenancy any person or organisation who has contributed to a bond and who has signed the bond form is entitled to make a claim on the bond.

The landlord/agent must provide the tenant with a signed claim form within 3 days of the end of the lease. If all parties agree to this and sign the claim form the Rental Deposit Authority (RDA) will pay out the bond as soon as possible in the proportions agreed to on the Claim form. Do not sign a claim form unless agreed amounts are written on the form.

A tenant may lodge a Claim Form without the signature of the landlord/agent if they have not received a signed Claim Form from the landlord/agent within 3 days of leaving the premises.

A landlord/agent might lodge a Claim Form without the tenants' signature. You should receive notification of this from the RDA and then you have 10 days to respond. The landlord/agent must provide evidence to support any claim against the bond such as photos, receipts, condition reports or rental ledgers. It is essential that you provide the RDA with updated contact details at the end of your tenancy to ensure you are contactable in the case of a dispute.

To dispute a claim against the bond you should obtain a Rental Bond Dispute Form from mybond.tas.gov.au or Service Tasmania. Include information that supports your claim such as photos, receipts, condition reports, invoices and correspondence. Once you have received a formal copy of the decision you have 7 days to appeal the matter to the Magistrates Court if you are unhappy with the outcome.

COMMON BOND ISSUES

At the end of your tenancy you must leave the premises as nearly as possible to the same condition, apart from reasonable wear and tear, as at the start of your tenancy (as set out in the condition report if there is one).

CARPET CLEANING

Carpets must be cleaned to the same level as at the start of the tenancy. Therefore carpet only needs to be cleaned professionally if it was at that standard to begin with even if it is a condition of your lease agreement.

GENERAL LABOUR

The landlord/agent can only charge expenses that are paid to a bona fide entity. This means that landlords generally cannot charge for their own labour, although they may be able to claim for expenses such as mower fuel and cleaning products.

DAMAGE

There are no hard and fast rules on damage but as a rule of thumb you may be charged:

- a) in the case of repair, the cost of the repair or
- b) in the case of replacement, the item's value at the time of replacement (not the cost of the replacement).

DEBTS

The RDA is only able to decide on bond disputes. If the landlord/agent wants to pursue debts that exceed the bond they will have to do it through the Minor Civil Division of the Magistrates Court or in some cases they may place your details with a debt collection agency. If you do not agree with this debt you can contact the agency to dispute it or you can pay what is owed and be removed as a debtor. You are not responsible for agency collection fees. The Tenants' Union can help should you wish to dispute the debt.

COMPENSATION

In some circumstances that are no fault of your own or the landlord/agent, personal goods can be damaged, destroyed or stolen (e.g flood or leak). Contents insurance can protect against losses from reasons like this.

If the landlord/agent is responsible for losses and you wish to pursue it you can make a claim with the Magistrates Court. You need clear evidence such as a repairer's statement to demonstrate the cause. If you have such an issue and need help with the process contact the Tenants' Union.

BOARDING PREMISES

The Act has additional conditions for **boarding premises** which are defined as a room occupied as a principal place of residence with shared bathroom, toilet or kitchen. However, it does not include buildings predominantly occupied by polytechnic, skills institute or tertiary students. The Act does not apply to boarding premises with 2 or less rooms where a landlord or head-tenant (a person who sub-lets to other tenants) occupies the same building as a principal place of residence.

DIFFERENCES BETWEEN BOARDING PREMISES AND OTHER TENANCIES

- Rent can only be charged for a maximum period of 14 days in advance
- No bond (security deposit) is to be levied
- General repairs are to be carried out within 7 days (Emergency and Urgent repairs must be carried out as soon as practicable)
- To terminate the lease (see Notice to Terminate) the tenant must state that they intend to leave the premises and the date they will leave. There must be at least 2 clear days notice
- The Residential Tenancy Commissioner adjudicates on most disputes in boarding premises between tenant and landlord. If you are unhappy with the ruling you may appeal to the Magistrates Court within 7 days of receiving notice of the ruling

EXTRA REGULATIONS FOR BOARDING PREMISES

- Lease agreements and receipts must list rent, meal costs and other services separately
- Tenants must have access to toilet and hand-washing facilities at all times and reasonable use of a bathroom or shower at least once per day. These facilities are to be private.
- A boarding premise (i.e. a room) is not to be occupied by more than one tenant unless they are joint tenants or one is a carer for the other
- If there are meals, they must be served between 6am and 9am, midday and 2pm & 5pm and 8pm.
- Tenants are to receive a written statement of principal terms of the agreement which must include a copy of the house rules or specify a place where they can be viewed, the name of the landlord and tenant, the location of the boarding premises, any facilities provided, date of the agreement, expiry date of the agreement (if for a fixed period), amount of rent to be paid and costs, times and frequency of any services provided.
- If there are house rules they must apply equally to all tenants and are to state (where applicable) meal times, rules about shared facilities, visitor access, parking and storage, service times, rules on smoking and alcohol, and methods of participation in and changes of house rules.

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CARAVAN PARKS

If you rent in a caravan park and it is your principal place of residence you may be covered by the Act. If you need further advice about the rights of caravan park tenants contact the Tenants' Union.

NEW LEGISLATION

At the time of printing, new legislation had passed the Tasmanian Parliament but the timeframe for its beginning had not been finalised. Check the Tenants' Union website (www.tutas.org.au) for up-to-date details. Here are the main changes:

- 1** Tenants will move on to a non-fixed term lease **immediately following** the end of a fixed term lease unless you have been given a valid Notice to Vacate or you give a valid Notice to Terminate prior to the end of the fixed term lease.
- 2** Tenancies will have to be advertised at a **fixed** price and the landlord/agent **must not invite** a tenant to bid higher than the advertised fixed price.
- 3** In addition to existing requirements, there will be minimum standards for residential tenancies. The standards will be rolled out over the next few years and a list of them can be found below at [6].
- 4** Only deposit-taking institutions (ie banks, credit unions) will be able to charge fees for paying the rent. Other services that landlords/agents use to collect rent must not charge fees to the tenant.
- 5** There will need to be 12 months between rent increases and at least 60 days notice. This does not apply to properties owned by Housing Tasmania who only need to give 60 days notice.

The Residential Tenancy Commissioner will preside over disputes about rent increases instead of the Magistrates Court. Tenants will have 60 days from **notice** of the rent increase to lodge a dispute with the Commissioner.
- 6** The new minimum standards for residential tenancy premises will come into effect over the next few years and are 1) weatherproof and structurally sound, 2) cleanliness at the start of the tenancy, 3) good repair, 4) weatherproof and structurally sound 5) bathroom and toilet, 6) cooking facilities, 7) electricity, 8) heating in main living area, 9) window coverings* and 10) adequate ventilation.

*Properties owned by Housing Tasmania are exempt from this requirement

- 7** Tap washers and inaccessible light globes will be deemed to be urgent repair and therefore a landlord/agent responsibility. Standard, accessible light globes are the responsibility of the tenant. In addition, cooking stoves with less than half the elements working will be deemed to be an urgent repair, while cooking stoves with at least half the elements working are deemed a general repair but with 14 days to repair, rather than the usual 28 days for general repairs.
- 8** If an item is unable to be repaired, the item is to be replaced with an item that serves the same primary function and functions to a similar standard as the original item before it was required to be repaired.
- 9** The new minimum standards require premises to be adequately ventilated and in good repair. These standards may assist in fixing mould problems.
- 10** The Residential Tenancy Commissioner will replace the Magistrates Court in deciding upon repair disputes.
- 11** In addition, the landlord/agent will need to have the tenant's written permission to publicly display photographs that show an object identifying a tenant or another person or photographs that display a tenant's belongings.
- 12** If there is a Family Violence Order (FVO) in place to protect the tenant, the tenant may change the locks and security devices without the consent of the landlord/agent.
- 13** The landlord/agent 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 and the end date.
- 14** Minimum notice extends from 28 clear days to 60 clear days for premises that have been repossessed.
- 15** An extra reason for eviction will be added to this section: d) for properties to be used as a residence by a member of the family of the owner. All four reasons (sale, renovation, change of use and family) will have the minimum notice period extended from 28 clear days to 42 clear days.

16 For Housing Tasmania owned properties **only**, tenants may be evicted for the following reasons (with minimum notice periods in brackets):

- Exceeding income and asset thresholds (90 clear days)
- Not requiring all bedrooms in a 4 bedroom property and alternative premises are offered (28 clear days)
- Not requiring special facilities in a modified premises and alternative premises are offered (28 clear days)
- Being away from the premises for more than 8 weeks continuously without approval (14 clear days)

17 Tenants wanting to leave at the end of a fixed term lease will need to give at least 21 clear days notice, and the notice must be given between 60 days before the end date and the end date. Tenants wanting to leave a non-fixed term lease still need to give 14 days notice.

18 Boarding premises will need to have adequate locks and security devices on the room of residence and entrance to the boarding premises. Bathroom and toilet facilities must allow the occupant the ability to exclude others while using the facility.

CONTACTS

TENANTS' UNION OF TASMANIA

166 Macquarie St Hobart

Advice Line: 1300 652 641

www.tutas.org.au

HOUSING CONNECT

CENTACARE HOMELESSNESS AND TENANCY SERVICES (CHATS)

BOND ASSISTANCE (AND OTHER HELP)

Phone: 1800 800 588

Statewide Services

CONSUMER AFFAIRS AND FAIR TRADING

Rental Deposit Authority (My Bond) and

Residential Tenancy Commissioner

Phone: 1300 654 499

www.consumer.tas.gov.au

MAGISTRATES COURT

BURNIE: 6434 6322

DEVONPORT: 6421 7892

HOBART: 6233 3623

LAUNCESTON: 6336 2605

www.magistratescourt.tas.gov.au/divisions/civil/residential_tenancy

