

Is it valid? Can it be remedied? When to leave?



Notice to Vacate

Information for Tenants

A landlord or agent can end a lease for six reasons as outlined below. Housing Tasmania has a further set of conditions. In order to end a lease, the landlord or agent must issue a valid, written Notice to Vacate (also known as an Eviction Notice) and allow the tenant specific periods of time to either remedy the issue or vacate.

VALID REASONS FOR A NOTICE TO VACATE

1. TENANT BREACHES THE LEASE AGREEMENT

Minimum Notice: 14 clear days

If a tenant breaches 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 the Notice ceases to have effect.

In essence, if the problem is fixed within 14 days then the tenant cannot be evicted on the basis of that Notice.

2. FAILURE TO PAY RENT

Minimum Notice: 14 clear days

A Notice to Vacate can be issued when there is **rent in arrears**. On the first or second notice within a 12-month period, if the full arrears are paid before the date that the Notice takes effect then the notice ceases to have effect. The landlord/agent must accept the arrears if paid during the notice period.

When a third Notice to Vacate is issued in a 12-month period for rent in arrears, the landlord/agent can require the tenant to vacate even if the

arrears are paid. To summarise, 3 strikes and you're out.

NOTE: The tenant must be served three valid Notices to Vacate within the 12-month period, not simply notified that their rent is in arrears.

3. END OF THE FIXED TERM TENANCY

Minimum Notice: 42 clear days

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

The landlord must serve the tenant with the notice before the end of their fixed term lease, and must give at least 42 days notice. The 42 days can extend past the original end date of the fixed term.

The notice to vacate cannot be issued sooner than 60 days before the end of the fixed term lease.

If the landlord does not issue a Notice to Vacate before the fixed term ends, the lease will *immediately* become a non-fixed lease.

4. THE PREMISES HAVE BEEN REPOSSESSED

Minimum Notice: 60 clear days

A mortgagee (bank, building society or other lending authority) may take possession of a premises if the owner hasn't made mortgage repayments. Once the mortgagee has taken possession, they are legally entitled to give the tenant 60 clear days notice to vacate even if a tenant has a fixed term lease.

**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 Tasmania as at June 2022. 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.

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

Minimum Notice: 42 clear days

A tenant on a fixed term lease cannot be evicted using this reason. A tenant on a non-fixed term lease can be given 42 days to leave the property if it is to be sold (not just an intention to sell), if it is being renovated (major or structural and would make the property uninhabitable), if the use of the premises is changing (no longer a rental property), or 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.

A notice to vacate on the basis that the property is sold must have attached to it proof of the sale, such as a contract of sale, otherwise the notice is of no effect.

6. SUBSTANTIAL NUISANCE AT THE PREMISES

Minimum Notice: 14 clear days

A landlord/agent can issue a Notice to Vacate if a tenant causes a substantial nuisance. This could be one large nuisance, such as an out-of-control party, or a smaller, but ongoing, nuisance such as noise pollution from a stereo.

7. HOUSING TASMANIA and COMMUNITY HOUSING PROVIDERS

Minimum Notice: Varies from 14 to 90 clear days

There are four additional reasons to evict tenants who live in public or community housing properties (with notice periods in brackets):

1. Exceeding income and asset thresholds (90 clear days).
2. Not requiring all bedrooms in a 4-bedroom property and alternative premises are offered (28 clear days)
3. Not requiring special facilities in a modified premises and alternative premises are offered (28 clear days).

4. 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.

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 reasons why the Notice is being issued – not just a restatement of the clause of the lease or section of the Act relied upon;
6. Date on which the Notice takes effect.

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

If there is a mistake in the Notice to Vacate, it can be argued that the Notice is invalid and a new one may need to be issued. A new Notice to Vacate will restart the notice period and it cannot be backdated.

IMMEDIATE TERMINATION

A landlord/agent may apply to the court for the immediate termination of an agreement, without needing to issue a Notice to Vacate, if the tenant:

- Causes, permits or is likely to permit serious damage to the premises or neighbouring premises, or
- Causes or is likely to cause physical injury to the landlord/agent or to neighbours

RENT PAYMENT AFTER A NOTICE TO VACATE

Tenants 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 past the date that the Notice to Vacate takes effect this does not mean that they are obligated to let a tenant keep their tenancy.

BEFORE LEAVING

It is good practice to collect evidence such as photographs and cleaning receipts and witness statements at the end of the tenancy. Go through the condition report and ensure that the premises are left as close as possible to these conditions, except for fair wear and tear. These could prove valuable if there is a dispute with the return of the bond.

No matter the reasons for the Notice to Vacate, the settlement of the Bond should follow the standard procedures; see our [Bond Fact Sheet](#).

EVICTON PROCESS FROM THE DAY THE NOTICE TAKES EFFECT

If a tenant is still in the premises after the notice period has ended, the landlord/agent must apply to the Magistrates Court for an Order For Vacant Possession. They cannot forcibly evict a tenant without an Order For Vacant Possession. This process has several steps:

1. The landlord/agent must apply to the Magistrates Court to have the matter heard.
2. The landlord/agent must serve a copy of the application on the tenant. The application will state where and when the application will be heard.
3. The matter goes to hearing where a tenant can put their case, such as that the Notice to Vacate is invalid, that the breach has been remedied, or that the breach is denied. If the tenant wins, the lease continues as if the Notice to Vacate was never issued, and if they lose the Court will decide how long they can remain in the property. The tenant can make arguments to the Court as to how long they will need to vacate.
4. If the tenant is still in the premises after the date set down by the judge, a Bailiff will enter the premises to evict the tenant and change the locks. It is illegal for a landlord or agent to change the locks without a Court order.

CONTACTS

Tenants' Union of Tasmania (TUT): Advice, legal support & representation for residential tenants

☎6223 2641 or 1300 652 641 tenants@netspace.net.au www.tutas.org.au

Residential Tenancy Commissioner (RTC): Information for all, Bond matters, Repair orders

Statewide Service Tasmania offices ☎1300 654 499 www.cbos.tas.gov.au

Tasmania Legal Aid: Legal advice & representation for low income earners ☎1300 366 611

Housing Connect: Centralised point of contact for government housing services, including emergency shelters, public and community housing, bond assistance and more

Statewide www.communities.tas.gov.au ☎1800 800 588

Women's Legal Service: Legal advice for women ☎1800 682 468

Equal Opportunity Tasmania: Discrimination complaints ☎6224 4905 or 1300 305 062