

Eviction Notice? Being Evicted?



NOTICE TO VACATE

Information for Tenants

A landlord or agent can end a lease for 6 main 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 (Eviction Notice) and allow the tenant specific periods of time to either remedy the issue or to 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 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 twelve month period, if the full arrears is paid before the effect date 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 twelve month period for rent in arrears, the landlord/agent can require the tenant to vacate even if the arrears is paid. To summarise, 3 strikes and you're out.

NOTE: The tenant must be served three valid Notices to Vacate, 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 give 42 clear days notice before the end of the fixed term tenancy, so long as the notice is received not more than 60 days before the end date of the lease.

Tenants not receiving a Notice to Vacate will *immediately* rollover to a non-fixed term lease following the end date of the 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 60 clear days notice even if a tenant has a fixed term lease.

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 requires tenants to leave) or the use of the premises is changing (no longer a rental property).

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. 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

7. NEW: HOUSING TASMANIA and COMMUNITY HOUSING PROVIDERS

Minimum Notice: Varies from 14 to 90 clear days

FROM 1st October 2015 there are four new reasons to evict tenants (with notice periods in brackets):

- a) Exceeding income and asset thresholds (90 clear days).
- 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.

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 tenants
3. Name of the landlord
4. Address of the premises
5. Detailed reasons why the Notice is being issued – not just a statement 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 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.

MUST RENT BE PAID?

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 this does not mean they are obliged to let a tenant stay on past the Notice effect date (unless it is either the first or second notice for rent arrears).

BEFORE LEAVING

It is good practice to collect evidence such as dated photographs and cleaning receipts and witness statements on Statutory Declaration forms at the end of the tenancy. Go through the condition report and ensure the premise is 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](#).

IF A TENANT DECIDES NOT TO LEAVE

Even after the notice period has ended, if a tenant wants 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 have the civil matter heard.
2. The tenant is notified of the hearing date in writing.
3. The matter goes to hearing where a tenant can put their case. If the tenant wins, they can stay and if they lose the Court will decide how long they can remain in the property.
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.

* Clear Days refers to a complete 24 hour period from Midnight to Midnight. Example, if a notice is served at 11am or 4pm one day, the first 'clear day' of that notice does not begin until Midnight that evening.

* NOTE: Many of the Notice Periods were amended in the *Act*, in October 2014 and as of 1, October 2015 apply to all leases in Tasmania.

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 Centre
☎1800 066 019

North West Community Legal Centre
☎6424 8720