



Natural Disasters Guide

Information for Tenants

Tasmania is the only state in Australia where the local residential tenancy act does not provide for the situation where the property becomes uninhabitable through no fault of either the tenant or the owner. As such, tenants may be placed in a difficult position as a result of a natural disaster.

The Tenants' Union strongly recommends that tenants purchase contents insurance before moving into a property.

PROPERTY COMPLETELY UNINHABITABLE

If a natural disaster causes a residential rental property to be completely uninhabitable the tenancy does not automatically end. The lease will end if the local council or other government body makes a formal order under the *Public Health Act 1997*, but this is uncommon. The owner must act to repair the property, and make it habitable, as soon as practicable. How long that is will depend on the severity of the damage, the difficulty of fixing it, and the availability of tradespeople qualified to carry out the repairs.

If the tenant thinks the owner is not acting as soon as practicable they can make an application for a repair order to the Residential Tenancy Commissioner, or issue a Notice to Terminate.

The obligation to continue paying rent whilst the property is uninhabitable is a common question. If an owner does not have insurance to cover the rent or refuses to waive the rent, then the tenant may have a claim against the owner in restitution. However, the tenant will

have to continue paying rent until their claim is resolved in the Magistrates Court. Tenants should seek legal advice if they believe they have a right to restitution.

If the owner has caused or contributed towards the damage by failing to properly maintain or repair the property prior to the disaster, the tenant may be able to claim the costs of having to vacate the property while it is uninhabitable (including hotels and storage) as well as rent. The tenant should ask their agent/owner to reimburse them for their reasonable costs. If the owner/agent refuses, the tenant will have to lodge a claim against the owner in the Magistrates Court.

PROPERTY PARTLY UNINHABITABLE

The owner must restore the property as soon as practicable. If they do not, the tenant may apply for an order for repairs, or terminate the tenancy.

Unlike if the property is completely uninhabitable, the owner's insurance, if they have it, is unlikely to provide for a rent reduction, nor is restitution likely to grant relief to the tenant.

The tenant should ask the owner/agent for a rent reduction while the property is not completely usable, but unless the owner has caused or contributed towards the damage it is unlikely that the tenant will be able to successfully claim compensation in the Magistrates Court.

TERMINATION

When the property becomes partly or completely uninhabitable as a result of a natural disaster the lease does not automatically terminate. If the tenant wishes to end the lease they should ask the owner/agent for a mutual termination of the lease. The tenant should ensure that any mutual termination is in writing highlighting the end to their financial obligations for the property.

If the owner/agent does not agree to a mutual termination the tenant may ask their local council to make an order under the *Public Health Act 1997*, which will terminate the tenancy.

If the owner is not carrying out repairs to the property as soon as practicable, the tenant may serve a notice to terminate on the owner/agent.

USEFUL CONTACTS

State Emergency Service (SES) flood and storm assistance ☎ 132 500
alert.tas.gov.au

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

TUT @ Launceston Community Legal Centre..... ☎ 1800 066 019

TUT @ North West Community Legal Centre..... ☎ 6424 8720

Residential Tenancy Commissioner..... ☎ 1300 654 499
(part of Consumer, Building and Occupational Services)

Housing Connect..... ☎ 1800 800 588

Legal Aid Commission of Tasmania..... ☎ 1300 366 611