



DON'T PANIC

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

5th Edition



TENANTS' UNION OF TASMANIA

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The Tenants' Union of Tasmania Inc. is a not for profit community organisation offering free services including tenancy advice, advocacy and referrals. This brochure has been prepared by the Tenants' Union of Tasmania, to provide Tasmanian residential renters with information on their rights and responsibilities as tenants. The information is based on current legislation – Residential Tenancy Act 1997 (the Act) in Tasmania as at 24 January 2019.

For information regarding a specific tenancy problem, please contact the Tenants' Union Advice Line on 03 6223 2641 or 1300 652 641. We do our best to answer calls in the order received, so please leave a message and we will return your call.

DISCLAIMER: The information in this booklet is not legal advice. The Tenants' Union of Tasmania Inc. accepts no responsibility for actions based on this information, nor for actions based on electronic translations of this information.

THE LEASE AND THE LAW

When a tenant and a landlord agree to exchange payment for residential accommodation a **lease agreement** is formed.

For most lease agreements, there are two sources of regulations: the agreement with the landlord and the Residential Tenancy Act 1997 (in this publication it is called the Act). Where the agreement with the landlord contradicts the Act, the Act prevails. Also, neither the tenant nor the landlord can agree to opt-out of parts of the Act.

We use the term **landlord** throughout this booklet to describe the person who lets the property, this includes the owner as well as any agent of the owner.

NEW LEGISLATION

With the Residential Tenancy Amendment Bill 2015 (Tas) new provisions for residential tenancies were added to the Act, while some old provisions have been changed. These amendments are being phased in over time and will be fully implemented by 1 August 2018.

To find out the latest on these matters, visit the Tenants' Union of Tasmania's website www.tutas.org.au to access our Fact Sheets which are regularly updated.

WHO IS NOT COVERED BY THE ACT

The Act does not apply to:

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

Even if the Act does not apply, your lease agreement may still be valid. However, much of this booklet discusses the 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 tenants must be given a copy within 14 days of the start of the agreement. Costs incurred in the preparation of a lease agreement are to be paid by the landlord.

It is difficult to prove verbal conditions of a lease, so it is best to have all agreements in writing, especially matters relating to conditions or repairs that are discussed while inspecting a property.

FIXED TERM AND NON-FIXED TERM

Lease agreements can be fixed term – with an end date OR non-fixed term – no end date. Many verbal lease agreements have no end date and are considered a non-fixed term lease.

The type of lease changes the rules for ending the lease.
(see *Ending a Tenancy* section)

CO-TENANCY AND SUBLETTING

Two or more tenants with a shared relationship to the landlord are considered **co-tenants**. Often in a co-tenancy 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 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 must 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. 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. The landlord 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

Tenancies must be advertised at a fixed price and the landlord must not invite prospective tenants to bid higher than the advertised, fixed price. A successful property application may be accepted or declined by the prospective tenant.

Many landlords ask for a great deal of personal information. This can be withheld but that could put that application 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 does not have to give a reason for rejection of an application so it may be difficult to ascertain if discrimination has occurred. If there is a belief that discrimination has occurred, it is best to contact Equal Opportunity Tasmania (1300 305 062).

It is legal for people under the age of 18 to enter into lease agreements.

TENANCY DATABASES

Residential tenancy databases (aka blacklists) are more commonly used on the mainland than in Tasmania. 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. Information is usually kept for 3 years.

Regulations in Tasmania mean that the landlord 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.

DEBT COLLECTION AGENCIES

Landlords are barred from accessing credit files from credit reporting agencies such as Tasmanian Collection Services under the Privacy Act. However, they can ask a prospective tenant to provide them with their credit file.

APPLICATION FEES

A prospective landlord 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
- The bond

HOLDING FEES

A holding fee may be paid by a prospective tenant to hold the premises for more than 7 days. A holding fee will hold the premise (keep it from being rented to another party) during the time agreed. A landlord is not obliged to accept a holding fee. The prospective tenant is not obliged to rent the premise when the holding fee expires, although this is the expectation. The rental does not officially commence until a lease is entered into. Sometimes a holding fee can be confused with a bond (security deposit) or rent in advance so be very clear what the fee is for, and ask for a detailed receipt.

BOND

Bonds are held with the Rental Deposit Authority (RDA) **not** the landlord. The maximum bond allowable is four times the weekly rent. Bonds are not to be charged for a boarding premise. For tenants finding it difficult to raise the bond, assistance may be available through Housing Connect (see Contacts).

PAYING A BOND

For a private rental, the bond is not paid to or held by the landlord. 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

PO Box 56

Rosny Park TAS 7018

A receipt will be issued and should be kept by the tenant, as it will include a receipt number, which must be used to claim the bond at the end of the tenancy. A landlord may wish to view this, or be given a copy before granting access to the property.

When renting through a real estate agency, the bond can be paid directly to the agent and they lodge it with the RDA and provide the tenant with receipt.

TRANSFERRING A BOND

If tenants are moving in to or out of a share house during an ongoing lease, they can transfer the bond to the new tenant(s). For that to occur more than one tenant has to be listed on the original Bond Lodgement form. A Tenant Transfer form, signed by the incoming and outgoing tenant(s) as well as the landlord will be lodged with the RDA. The incoming tenant will pay their bond to the outgoing tenant.

GETTING THE BOND BACK

Please see page 19 – in the *Ending a Tenancy* section, for information on the process for having a bond returned, claims, disputes and common bond issues.

CONDITION REPORTS

A condition report is evidence describing the condition of the property at the beginning of occupancy. If a landlord requires a bond, they must provide two copies of a completed condition report stating the condition on, or the day before the tenant occupies the premises. The tenant must return one signed copy to the landlord within 2 days with any disagreements clearly noted. It is good practice to take date-marked photos prior to moving in, while reviewing the condition report. This report and photos are relied upon to decide damage and bond disputes.

CONDITION OF THE PROPERTY

Premises that are intended for use as a rental property must be **structurally sound** and **weatherproof**. The landlord has to ensure the roof, floors, ceiling, walls and stairs are in good repair, are not significantly damp and are not liable to collapse because they have rotten or are otherwise faulty.

When entering into, renewing or extending a lease agreement, the landlord has to make sure the property is **clean**, meaning clear of dirt, mould, removable stains and any unwanted matter. During the tenancy this is the tenant's responsibility.

The premises must also be in **good repair at the beginning of the tenancy**. This means premises must not have any defects, be fit to live in, be secure and in compliance with health and safety laws and regulations.

MAINTENANCE

It is the landlord's responsibility to keep the premises in **good repair throughout the tenancy**. This means they have to remedy items, which are no longer in good repair – due to their length of use. As an example, it is reasonable that after 10+ years carpets may cease to be in good repair and a landlord should take steps to replace them.

REQUIRED AMENITIES

In order to comply with the minimum standards for rental properties under the Act, a landlord must provide all of the following amenities.

The property must have functioning **locks**, suitable to keep the property secure, and has to be fitted with sufficient, properly fitted and functioning **smoke alarms**.

Properties have to contain a functioning, flushable **toilet**, which is properly connected to a sewer or septic system, and is located in a suitable, ventilated room.

The **bathroom** in a house or apartment has to be a private room that comprises a washbasin, and a shower, a bath or both, that all supply a reasonable amount of hot and cold running water.

Cooking Facilities must be in a separate kitchen or kitchen area with a functioning sink, stovetop and oven. The stovetop must have at least two hotplates in a premise of up to 2 bedrooms and 3 hotplates in a premise of 3 or more bedrooms. The oven can be a conventional oven, a convection oven, a microwave or a combination of any such ovens.

Furthermore the property must be connected to a mains **electricity** supply or other device capable of providing sufficient power. All power points and wires of the electrical system must be safe and unless noted in the condition report, functioning.

All rooms, except in a storage area or garage, must have

adequate lighting and the main living area must contain a **heating** device that is a fixture. This can be an electric or gas heater or a heat pump, but usually not an open fireplace. However, the Residential Tenancy Commissioner can approve the use of open fireplace as the main source of heating.

The landlord must also ensure, that each room is adequately **ventilated**, either by a window, a connection to a room with a window or an exhaust fan. However, as a security precaution windows must be lockable in an open position, with a gap of maximal 15cm to allow ventilation but prevent people entering through the window.

Finally, each window in a room, that is likely to be used as a bedroom or living area, must be covered by **curtains or blinds for the purpose of protecting tenants' privacy**. Housing Tasmania and Community Housing properties are exempt from this provision.

DURING THE TENANCY

CHARGES ALLOWED DURING THE TENANCY

The landlord may only charge the following three items 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. The tenant must contact the various utility companies to connect these services. Infrastructure repairs associated with these services are the landlord's responsibility. The landlord cannot directly charge tenants for electricity if the bills are in the landlord's name and must instead allow for this

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. Tenants should ask to see the bill and are not required to pay charges without sighting the bill. Once satisfied of the usage component of the bill, tenants should make the required payment directly to the landlord. Tenancies on shared meters cannot be accurately metered for their individual consumption 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, tenants pay for time they will be in the property, not the time they have been in the property. The amount paid in advance depends on the **payment period**, or how often rent is paid according to the lease. In Tasmania this is usually weekly. A payment period cannot exceed four weeks (or two weeks for boarding premises). Tasmanian landlords cannot charge rent by the calendar month.

A payment period cannot be changed unless all parties to the lease agree to it.

RENT PAYMENT AND RECEIPTS

If a tenant pays by cash or cheque, they 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 cannot change the method of payment during a lease without the tenant's consent.

Only deposit-taking institutions such as banks or credit unions may charge fees for paying rent. Other services that landlords use to collect rent must not charge fees to the tenant.

RENT INCREASES

A landlord can increase the rent for a non-fixed term lease, or a fixed term lease that explicitly allows for rent increases to occur. When a fixed term lease agreement does not include provision for a rent increase, rent cannot be increased during the term of that lease.

The increase notice must be in writing, stating the new rent and the day on which the increase takes effect. The tenant must be given at least 60 clear days notice and there must be at least 12 months between increases. This does not apply to social housing properties where only 60 days notice must be given.

If a tenant believes an increase is unreasonable it may be challenged with the Residential Tenancy Commissioner (RTC). Tenants will have 60 days from notice of the rent increase to lodge a dispute. In deciding if an increase is unreasonable the RTC takes into account the general level of rents for comparable premises in the locality and any other relevant matter. The Tenants' Union can provide advice on this.

RENT ARREARS

Rent arrears occur when rent has not been paid for the period a tenant is in the property. However, it is not the same as the rent in advance period.

Example: Rent is paid fortnightly in advance and the next payment period is for April 1st to April 14th. If rent is not paid until April 5th, rent is in arrears from April 1st until April 4th. Once the rent is paid it is no longer in arrears until April 14. If rent is regularly paid late, there is a breach of the 'rent in advance' clause in the Act.

It is a condition of all lease agreements that rent must be paid when it falls due. Should a tenant get behind in rent the landlord may give 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 at least 14 clear days notice to solve the problem:

- to pay the arrears owing, remedying the problem (and therefore no further action can be taken)

OR

- to vacate the property (note that any rent arrears may be taken from your bond).

It is always best to pay the rent arrears plus the rent in advance. If the rent arrears is not paid within 14 days of receiving the Notice to Vacate or a tenant receives three Notices to Vacate for rent arrears during a 12 month period, the landlord is entitled to apply to the Court to evict, even if the tenant then pays the arrears owing from the third notice.

HOLDING POSSESSIONS (DISTRESS)

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

REPAIRS & MAINTENANCE

RESPONSIBILITY FOR DAMAGE AND CLEANLINESS

Landlord Responsibilities

The landlord 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 not contactable or unwilling to meet obligations.

The landlord must maintain the rental premises in the same

condition (good repair) as existed at the beginning of the tenancy, except for reasonable wear and tear.

Tenant Responsibilities

Tenants must keep the property clean and must not allow or cause damage to occur to the property. If damage occurs or repairs are required, the tenant must notify the landlord within 7 days of the damage occurring.

Tenants are not required by the Act to notify the landlord if they are responsible for damage to the property, they are responsible for rectifying any damage, back to the original condition.

Upon vacation, tenants 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 levels of repairs:
Emergency, Urgent and General**

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 as soon as practicable.

If a landlord cannot be contacted or fails to arrange for the repairs, and the damage is likely to worsen and cause the property to deteriorate, a tenant may authorise the repairs to be done by a **nominated** repairer, or if there is no nominated repairer, a **suitable** repairer.

A nominated repairer is a repairer who is nominated by the landlord to carry out any repairs. A suitable repairer is a person who holds a licence (if necessary) to carry out the relevant repairs and is ordinarily employed to do so.

The repairs should only be carried out to the extent to prevent further damage or deterioration to the property. The landlord 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 with:

- a statement from the repairer of the apparent cause for repair
- a copy of the account
- a copy of the receipt

The landlord is to reimburse the tenant within 14 days. If the landlord disputes their obligation to reimburse the tenant, the tenant may apply to the Magistrates Court for the matter to be determined. A landlord may only dispute the repair on grounds that:

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

URGENT REPAIRS

Urgent repairs arise when an **essential service** ceases to function. A tenant must inform the landlord of the need for the urgent repair as soon as practicable, and in turn the landlord must have the essential service restored as soon as practicable.

Essential services include: water, sewerage, electricity, cooking stove and oven, hot water service, removal of grey water and any working heating appliances supplied with the property.

Tap washers and inaccessible light globes will be deemed to be urgent repair and therefore a landlord responsibility. Standard, accessible light globes are the responsibility of the tenant. In addition, cooking stoves with less than half the elements working are deemed to be an urgent repair, while cooking

stoves with at least half the elements working are deemed a general repair but must be repaired within 14 days, rather than the usual 28 days for general repairs.

If the landlord cannot 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 to do repairs), or if there is no nominated repairer, a suitable repairer (someone who holds a license 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. Payment for urgent repairs follows the same procedure as payment for emergency repairs.

GENERAL REPAIRS

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

The landlord is then required to carry out the repairs within 28 days (or in the case of boarding houses, 7 days). However, the landlord is only required to repair problems that are not the fault of the tenant. If a tenant wants to undertake repairs, they must get the permission of the landlord.

If an item is unable to be repaired, the item is to be replaced with another that serves the same primary function and functions to a similar standard as the item before it was required to be repaired.

When requesting repairs and maintenance it is always best to do so in writing using the Notice for Repairs form that can be found on the Tenants' Union of Tasmania website (www.tutas.org.au).

WHAT IF THE LANDLORD WILL NOT DO REPAIRS?

Tenants should not stop paying rent when the landlord will not carry out repairs as this is in breach of the lease agreement and tenants could receive a Notice to Vacate. The options available 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, notify the landlord in writing and it is a good idea to speak to them and remind them that there is an issue that needs to be fixed.

Option 2: A tenant may apply to the Residential Tenancy Commissioner for an order that the landlord carry out repairs that do not arise from the fault of the tenant.

Option 3: If a landlord does not carry out urgent and emergency repairs within a practicable time or general repairs within 28 days of being notified, the tenant may serve a Notice to Terminate to end the lease 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.

(see *Terminating the lease* section for more information)

NATURAL DISASTERS AND INSURANCE

If rental premises or a tenant's possessions are wholly or partially destroyed by a natural disaster, the landlord will not have to compensate them for the cost of seeking alternative accommodation or related expenses unless the landlord in some way caused or contributed towards the damage, or fails to repair the damage as soon as practicable. As such, we recommend that tenants get insurance that protects their possessions and pays for alternative accommodation in the event of a natural disaster.

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. The best way to get rid of mould is with a vinegar or alcohol solution (1 part vinegar/alcohol to 4 parts water). If the mould keeps coming back despite a tenant's best efforts, it is likely a structural problem and a landlord responsibility. A tenant can seek general repairs to fix the problem such as: fans, efficient heating or window locks to allow airing. Alternatively, they can contact their local council for an inspection from an Environmental Health Officer, who can compel landlords to fix problems under the Public Health Act.

NOTE: Adequate ventilation is now part of the minimum standards. (see *Condition of the property* section for more information)

ASBESTOS

Asbestos is a potentially harmful substance found in some older building materials. High concentrations and regular exposure to asbestos can cause serious health risks. Internal cement sheet walls or ceilings containing asbestos, that are painted, sealed and in good condition 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 have deteriorated.

If there is a concern about any asbestos in a premise, the tenant should contact their landlord to have a licensed asbestos professional assist in identification and removal. If the landlord will not help, then the tenant should contact an Environmental Health Officer at their local council.

PEST INFESTATION

Pest infestations that are not the fault of the tenant are a landlord responsibility. Tenants should ensure that the kitchen

is kept clean, with no food or dirty dishes left out. If the pests become a safety issue tenants can receive assistance from the Environmental Health Officer at their local council.

PRIVACY

Tenants are entitled to quiet enjoyment of the property they are renting. Quiet enjoyment means that the landlord must not interfere with the peace, comfort or privacy of the tenant. Landlords can be fined for not complying with the tenants right of quiet enjoyment. The Residential Tenancy Commissioner is the first point of contact for a complaint.

However, there are a number of clearly defined situations in which a landlord can enter a property without the tenant's permission, but with prescribed notice periods.

NOTICE PERIODS FOR LANDLORD ENTRY

Landlords can enter the premises **without tenant permission** by providing sufficient written notice and in specific circumstances.

The most common grounds for a landlord to enter a leased property are:

- To carry out an inspection within 1 month of the commencement of the lease agreement (not in boarding premises)
- To carry out routine inspections every 3 months, or monthly in a boarding premises
- To ensure repairs have been properly carried out
- To meet commitments under the lease agreement (e.g. maintaining the garden)
- If it is reasonably suspected that the tenant has failed to comply with any provision of the lease agreement

In these situations the landlord has to give **24 hours notice** to the tenant and can only enter between 8am and 6pm.

With a **48 hours notice**, but only once per day, for a maximum of five days a week between 8am and 6pm a landlord can enter a property for the following reasons:

- To show one prospective tenant (and anyone accompanying them) where a valid Notice to Vacate or Notice to Terminate has been properly provided.
- To show one prospective purchaser (and anyone accompanying them) if the premises are for sale.

Where it is **reasonably** believed that one of the following situations is occurring, a landlord can enter **without notice** and at any time:

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

OPEN HOMES

A landlord cannot hold an open home for sale or re-letting unless they receive written permission from the tenant. Tenants are advised to check their contents insurance with their insurer about special conditions that may be associated with open homes, before granting permission.

PHOTOGRAPHS

An owner must not, without the written consent of a tenant, display to the public a photo or video of the premises that displays any object that might identify the tenant or another person. Entry to the premises to take photographs should follow the usual notice periods. Exterior photos can be taken without providing notice or receiving tenant permission.

REPORTING

Landlords breaching the privacy provisions can be fined. To report a breach contact the Residential Tenancy Commissioner (1300 654 499).

LOCKS AND SECURITY

The landlord 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.

NOTE: 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, but must ensure that they provide them with a key as soon as practical.

ALTERATIONS TO THE PREMISES

Written permission is required to add fixtures or make any alteration or addition to the premises. Fixtures are items that form part of the property, and can include curtains, heat pumps, carpet and kitchen appliances such as ovens and dishwashers. Tenants may remove any fixture that they have added to the property at the end of the lease as long as the act of removing it does not damage the premises. Tenants can remove fixtures without permission if doing so will not alter the premises, such as light globes (for example to install energy saving globes), as long as they return the premises to its original state at the end of the lease. If damage occurs from removing a fixture, the tenant must notify the landlord. The landlord may then allow the tenant to fix the damage or request compensation.

USE OF PREMISES

Premises cannot be used for unlawful purposes or any purpose other than as a residence 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 permission (assistance animals excepted). It is best to have written evidence of any agreement.

SMOKE ALARMS

All Tasmanian residential tenancies are required to be fitted with working smoke alarms, by the landlord. The legislation includes requirements for the location of smoke alarms.

Find details on the Consumer, Building and Occupational Services website (www.cbos.tas.gov.au).

All smoke alarms must be powered by a 10-year non-removable battery or mains power.

ENDING A TENANCY

Ending a Fixed Term Lease: At the end of a fixed term lease a tenant does not need to leave unless they wish to OR have been given a valid Notice to Vacate. If they have not been provided a Notice to Vacate or signed a new lease before the end date of their current lease, the tenant immediately moves on to a non-fixed term lease with all conditions of the original lease remaining. If the tenant wishes to leave, they should provide the landlord with a Notice to Terminate.

Ending a Non-Fixed Term Lease: A lease of this type can only be ended when the tenant wishes to move (and provides a Notice to Terminate) or the landlord provides a valid Notice to Vacate with valid reasons to evict a tenant.

BY MUTUAL AGREEMENT

The tenant and landlord can mutually agree to end a lease agreement at any time with any notice period. This agreement should be 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 to notify the landlord in advance.

LANDLORD ENDING THE LEASE

NOTICE TO VACATE

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

- Date of serving the Notice
- Name of the tenant/s
- Name of the landlord/s
- Address of the premises
- Detailed reason(s) why the Notice is being issued – not just restating the Section breached
- Date on which the Notice takes effect

There are 6 main reasons a landlord can give tenants a Notice to Vacate:

1. Failure to pay rent / Rent in Arrears

- Minimum Notice is 14 clear days

When it is the first or second notice within a 12 month period, and, the tenant pays the full arrears before the effect date, the notice ceases to have effect. The landlord must accept the

arrears if paid during the notice period.

When a tenant receives a third notice during a 12 month period, the landlord can require a tenant to vacate even if arrears are paid. It is the right of the landlord to recoup any rent in arrears from the bond.

2. Tenant breaches the lease agreement

– Minimum Notice is 14 clear days

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. A landlord may issue a Notice to Vacate if a tenant breaches a term of the lease agreement, and/or a section of the Residential Tenancy Act.

3. End of the fixed term tenancy

– Minimum Notice is 42 clear days

The landlord must issue a Notice to Vacate if they want the tenant to vacate at the end of a fixed term lease. A Notice to Vacate for this reason can only be served from 60 days prior to the lease ending, until the lease end date. The Notice must give a minimum 42 clear days notice, with the notice end date not being earlier than the lease end date.

If a Notice to Vacate is not served upon the tenant or a new lease is not signed by the lease end date, the tenant immediately moves to a non-fixed term lease with all conditions of the original lease.

4. The premises have been repossessed

– Minimum Notice is 60 clear days

A mortgagee (bank, building society or other lending authority) may take possession of the premises if the landlord has not paid their mortgage repayments. Once the mortgagee has taken possession they are legally entitled to give the tenant 60 days notice even if there is a fixed term lease.

5. Sale, significant renovation, change of use or owner's family use of premises

– Minimum Notice is 42 clear days

A tenant with 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), renovated (major or structural and requires tenants to leave) or the use of the premises is changing (no longer a rental property).

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.

Tenants on a **FIXED** term lease cannot be evicted using the reasons listed under section 5.

6. Substantial nuisance at the premises

– Minimum Notice is 14 clear days (immediate through court)

A landlord can issue a Notice to Vacate if a tenant causes problems of a substantial nature. While substantial nuisance is not clearly defined in the Act, it may include nuisance that cannot be remedied. Continuous minor nuisance can also be considered substantial nuisance. Also note that the landlord 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

Contact the Tenants' Union of Tasmania for assistance with a NtV for substantial nuisance.

Housing Tasmania Evictions:

– Minimum Notices vary from 14 to 90 clear days in Housing Tasmania owned properties, there are four new reasons to evict tenants (with notice periods in brackets):

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

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

COURT

Even after the notice period has ended, if a tenant wants to stay, the landlord must still apply to the court to see if their Notice to Vacate is valid before eviction can occur. This requires several steps:

1. The landlord 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 the tenant can put their case;
4. If the tenant wins, they can stay and if they lose the court will decide how long they can remain in the property;
5. If the tenant loses, a bailiff will enter the premises to evict them and change the locks. **It is illegal for a landlord to change the locks without a court order.**

TENANT ENDING THE LEASE

BREAKING THE LEASE

If a tenant needs to leave for personal, work, financial or family reasons and cannot come to an agreement with the landlord, they will need to break the lease. Under the Act, if a tenant wishes to leave before the end of a fixed term lease they are responsible for the full rent until the end of the lease or until new tenants can be found. Both the tenant and the landlord are required to take all reasonable steps to 'mitigate loss'.

Tenants are liable for all reasonable costs involved in finding a new tenant. However, the landlord can only charge for actual, itemised costs (not a break lease fee) of finding a new tenant, which are usually the advertising costs. The time remaining on the lease will be considered.

The landlord is to take all reasonable steps to find a new tenant for the property. The steps MAY include offering the property with similar terms and conditions that currently exist and using suitable means of advertising. A tenant can reduce costs by finding potential tenants themselves and putting them in touch with the landlord.

If the landlord appears to not be taking all reasonable steps to re-let the property a tenant may then not be liable for further rent for the property. In this situation they should contact the Tenants' Union.

TERMINATING THE LEASE

If a tenant wishes to leave prior to the end of a lease agreement, because the landlord has failed to meet a provision of the Act or the lease, they can serve the landlord with a Notice to Terminate.

A tenant can also use a Notice to Terminate to end their **NON-FIXED TERM** lease when they wish to end the Lease, giving a minimum of 14 clear days notice.

A tenant can use a Notice to Terminate to end their **FIXED TERM** lease for the following reasons:

- **The landlord has failed to carry out repairs** (that are not the fault of the tenant) within the time prescribed under the Act. However, if the repair has been completed after the time prescribed but before the Notice to Terminate has been served, then this reason becomes invalid. In other words, the problem must still exist to issue a valid Notice to Terminate. However, if landlord fixes the problem during the notice period, the tenant may still terminate the agreement at the end of the notice period.

- **The landlord has breached other provisions of the Act or the Lease.** For all other breaches, if the landlord fixes the problem within the notice period, then the Notice to Terminate is of no effect and the lease continues.

Tenants must give 14 clear days notice (except for boarding premises where it is 2 clear days). Rent must be paid until they vacate the premises.

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

- Date of service of the Notice
- Landlord name
- Tenant/s name
- Address of the premises to which the Notice applies
- Reason/s for the Notice – not just the Section breached
 - Be very specific with the details, if the breach was for a non-repair, state what repair was required and what steps were taken by the tenant and the landlord. Keep copies of any correspondence to support the notice.
- Date that the Notice takes effect – 14 days from the date the notice is given

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

COURT

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

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

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

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.
- there is no surviving tenant in relation to the premises

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

DISPOSAL OF GOODS

Goods that appear to be abandoned by a tenant may be dealt with by the landlord in the following ways:

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

The proceeds are to be dealt with:

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

RETURN OF BOND

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 must provide the tenant with a signed claim form within 3 business 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 blank claim form, a claim form without values or a claim form where the amounts listed are in dispute.

A tenant may lodge a Claim Form without the signature of the landlord if they have not received a signed Claim Form from the landlord within 3 days of leaving the premises, or if they dispute the amounts claimed by the landlord.

A landlord may lodge a Claim Form without the tenants' signature. The tenant should receive notification of this from the RDA and has 10 days to respond. The landlord must provide evidence to support any claim against the bond such as photos, receipts, condition reports or rental ledgers.

It is essential that the tenant provide the RDA with updated contact details at the end of their tenancy to ensure they are contactable in the case of a dispute.

To dispute a claim against the bond – obtain a Rental Bond Dispute Form from mybond.tas.gov.au or Service Tasmania. Include information that supports the claim such as photos, receipts, condition reports, invoices and correspondence.

Once a formal copy of the decision has been received, there are only 7 days to appeal the matter to the Magistrates Court if the tenant is unhappy with the outcome.

COMMON BOND ISSUES

At the end of a tenancy the premises must be left as nearly as possible to the same condition, apart from reasonable wear and tear, as at the start of the tenancy. This should be set out in the condition report, if there is one. It is good practice to take photos of the property on the day it is vacated, after cleaning. Pay attention to areas that may be disputed; i.e. damage vs. reasonable wear and tear. Having general photos of all rooms can assist if a landlord wishes to claim damages where no damage existed.

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 at the beginning of the lease agreement. Again, photos of the state of the carpet at the beginning of the lease will assist.

GENERAL LABOUR

The landlord can only charge expenses (to return a property to condition) 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 a tenant may be charged:

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

DEBTS

The Residential Tenancy Commission is only able to decide on bond disputes to the limit of the bond. If the landlord 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 a tenant's details with a debt collection agency. The tenant can then either pay what is owed and be removed as a debtor, or if they do not agree with the debt they can contact the agency to dispute it. The tenant is not responsible for agency collection fees. The Tenants' Union can help dispute a debt.

COMPENSATION

In some circumstances that are not the fault of the tenant or the landlord, personal goods can be damaged, destroyed (e.g. by flood or leak) or stolen. Tenants should take out contents insurance to protect against losses from events like this.

If the landlord is responsible for losses and the tenant wishes to pursue compensation, they can make a claim with the Magistrates Court. Clear evidence such as a repairer's statement must demonstrate the cause. The Tenants' Union can assist with this type of claim.

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.

The Act does not consider a premise which: contains less than three boarding rooms and the owner occupies the same building or where the tenant occupies the building and subleases out rooms, as a boarding premise.

The Act does not apply to premises, which are tertiary institution based student accommodation.

DIFFERENCES BETWEEN BOARDING AND OTHER TENANCIES

- Rent can only be charged for a maximum period of 14 days in advance
- No bond (security deposit) is to be charged
- 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 a tenant is unhappy with the ruling they 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.
- Bathroom and toilet facilities must allow the occupant the ability to exclude others while using the facility.
- 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 as follows: Breakfast from 6am – 9am, Lunch from Noon- 2pm and Dinner from 5pm – 8pm.
- Tenants are to receive a written statement of principal terms of the agreement which must include a copy of the house

rules, 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.

- The house rules must be displayed in a prominent place which all tenants have access to.
- 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.
- Boarding premises must have adequate locks and security devices on the room of residence and entrance to the boarding premises. These must be maintained by the owner.

CARAVAN PARKS

If a tenant rents in a caravan park and it is their principal place of residence they may be covered by the Act. Further advice about the rights of caravan park tenants is available from the Tenants' Union.

GLOSSARY OF TERMS

Clear Days: A complete day. Example: A clear day must be 24 hours – Day 1 of a notice begins at 12:01am the day after the notice is served. Any action pertaining to the notice cannot begin until Day 15, therefore allowing the passage of 14 clear days.

Notice to Terminate: The notification to end a lease agreement from the Tenant to the Landlord.

Notice to Vacate: The notification to end a lease agreement from the Landlord to the Tenant, also known as an 'eviction notice.'

CONTACTS

TENANTS' UNION OF TASMANIA

166 Macquarie St, Hobart

Advice Line: 1300 652 641

www.tutas.org.au

Services include legal advice, information and representation for tenants; community legal education and advocacy.

HOUSING CONNECT

Statewide Services

Services include accepting applications for social housing, support and advice on private rentals, information and advice on housing options, emergency accommodation and more.

CONSUMER BUILDING AND OCCUPATIONAL SERVICES (CBOS)

CBOS incorporates the Residential Tenancy Commissioner (RTC), who can order repairs to be carried out, assess unreasonable rent increases and determine disputes about bond; and the Rental Deposit Authority (RDA), which is the agency bonds are held with.

Phone (CBOS, RTC, RDA): 1300 654 499

www.cbos.tas.gov.au

Bond queries: RDA@justice.tas.gov.au

Bond disputes: RTC@justice.tas.gov.au

MAGISTRATES COURT

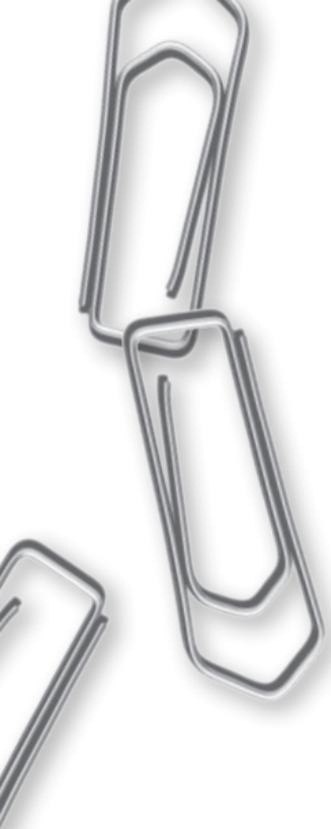
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DEVONPORT: 6421 7892

HOBART: 6233 3623

LAUNCESTON: 6336 2605

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



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THIS PUBLICATION WAS FUNDED BY THE COMMONWEALTH ATTORNEY-GENERAL'S DEPARTMENT AND THE SOLICITOR'S GUARANTEE FUND

PRODUCED BY THE TENANTS' UNION OF TASMANIA

FIRST EDITION 2011, SECOND EDITION 2013,
THIRD EDITION 2016, FOURTH EDITION 2018
FIFTH EDITION 2019