

“
Renting a home
A guide for tenants
and landlords
”

\$500 Fine

Landlords and agents must give a copy of this guide to residents on or before the day they move in or face a fine of up to \$500



Renting a home: a guide for tenants and landlords is the summary approved by the Director for Consumer Affairs Victoria of the rights and duties of a landlord and tenant under a Tenancy Agreement.

Under section 66 of the *Residential Tenancies Act 1997*, the landlord must give the tenant this guide on or before the occupation day.

Additional copies

This guide is available from Consumer Affairs Victoria at www.consumer.vic.gov.au or 1300 55 81 81.

To order more than five copies at a time, fax a request to (03) 8684 6333 or write to:

Consumer Affairs Victoria
GPO Box 123A
Melbourne Victoria 3001.

Disclaimer

This guide should not be used as a substitute for the *Residential Tenancies Act 1997* or professional legal advice.

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“ *Renting a home* *A guide for tenants* *and landlords* ”

Who this guide is for

This guide explains what tenants, landlords and agents must do to follow Victoria’s residential tenancy laws. The main piece of legislation that covers tenants, landlords and agents is the *Residential Tenancies Act 1997* (the Act).

Consumer Affairs Victoria produces the guide as a summary of many of the rights and duties of landlords and tenants under a tenancy agreement. It should not be used as a substitute for the Act, or professional legal advice.

When the guide refers to ‘the premises’ it means the house, townhouse, flat, unit or apartment being rented.

For advice and information on consumer and residential tenancy matters:

Consumer Affairs Victoria
Victorian Consumer & Business
Centre

113 Exhibition Street

Melbourne Victoria 3000

Tel 1300 55 81 81 (local call charge)

Fax (03) 8684 6001

Email consumer@justice.vic.gov.au

Website www.consumer.vic.gov.au

TIS 131 450

Textphone (TTY) or modem users only, ring the NRS on 133 677, then quote 1300 55 81 81

Callers who use Speech to Speech Relay, dial 1300 555 727 then quote 1300 55 81 81

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Useful contacts

Residential Tenancies Bond Authority (RTBA)

The RTBA holds all residential tenancy bonds in a neutral capacity as a trustee for landlords and tenants. The RTBA can only repay bonds as agreed by the landlord and tenant or as directed by the Victorian Civil & Administrative Tribunal or a court.

Tel 1300 13 71 64 (local call charge)

Fax (03) 8684 6299

Email rtba@justice.vic.gov.au

Website www.rtba.vic.gov.au

Postal Address Locked Bag No 3040

GPO Melbourne Victoria 3001

Victorian Civil & Administrative Tribunal (VCAT)

VCAT operates independently of Consumer Affairs Victoria. It is similar to a court but not as formal, and deals with issues in many areas, including disputes arising from the *Residential Tenancies Act 1997*.

VCAT 55 King Street Melbourne
Victoria 3000

Tel (03) 9628 9800

Freecall 1800 13 30 55

Fax (03) 9628 9822

Email vcat@vcat.vic.gov.au

Website www.vcat.vic.gov.au

Postal Address GPO Box 5408cc
Melbourne Victoria 3001

Equal Opportunity Commission Victoria (EOCV)

EOCV provides information and advice about equal opportunity rights and responsibilities and helps people resolve complaints of unlawful discrimination or harassment through its impartial, confidential and free conciliation service.

EOCV 3/380 Lonsdale Street
Melbourne Victoria 3000

Advice Line (03) 9281 7100

Fax (03) 9281 7171

Freecall (country callers) 1800 13 41 42

TTY (03) 9281 7110

Email eoc@vicnet.net.au

Website www.eoc.vic.gov.au

Office of Housing

The Office of Housing is a division of the Department of Human Services. The Office of Housing provides a range of housing services including the Bond Loan Scheme and public rental housing to eligible residents of Victoria.

For further information on assistance provided by the Office of Housing and application forms for the Bond Loan Scheme, contact your closest Housing Office (listed in the White Pages A-K under Human Services, Housing Services) or visit their website at: www.dhs.vic.gov.au/housing.

The Real Estate Institute of Victoria (REIV)

The REIV is the peak industry association representing Victoria's real estate agents.

REIV 335 Camberwell Road
Camberwell Victoria 3124

Information service

1900 937 348

(charges for the use of this service will apply)

Fax (03) 9205 6699

Email reiv@reiv.com.au

Website www.reiv.com.au

Fines

Consumer Affairs Victoria can take tenants, landlords and agents to the Magistrates' Court for not obeying certain obligations under the *Residential Tenancies Act 1997* (the Act). In such circumstances, the Magistrates' Court may impose a fine.

Where this guide refers to a fine, it means the maximum fine that can be imposed by the Magistrates' Court. If the court decides to impose a fine it is payable to the Residential Tenancies Fund.

Privacy

There are clear rules under the Act on when a landlord or agent is allowed to enter a tenant's residence and they are discussed on page 18 under 'Entry to the premises by the landlord or agent'.

If you give personal information to landlords or agents (such as your phone number or date of birth), they may be bound by privacy laws that restrict the cases in which this information can be passed on to third parties. If you think your information is being misused, contact Consumer Affairs Victoria on 1300 55 81 81 or the Federal Privacy Commissioner on 1300 36 39 92 for advice.

Tips for tenants

It is very important that tenants do not sign a blank form, official or otherwise.

All official and formal notices that are given to the landlord or agent must include the name of the landlord.

At the beginning of a tenancy

- Seek professional advice if any tenancy issue is unclear.
- Read and sign the 'Residential Tenancy Agreement' and keep a copy.
- Read this guide on renting premises in Victoria.
- Thoroughly check that the premises are completely safe.
- If paying a bond, complete and sign the 'Condition Report' and keep a copy.
- Pay the bond to the landlord or agent.
- Complete and sign the 'Bond Lodgement' form and keep a copy.
- Keep the RTBA receipt which assists in reclaiming the bond.
- Comply with all parts of the 'Residential Tenancy Agreement'.
- Comply with all regulations connected with the *Residential Tenancies Act 1997*.

- Check responsibilities regarding the cost of water usage and sewerage disposal.
- To rectify any situation, it is best to contact your landlord or agent before taking further action.

At the end of a tenancy

- Give the correct amount of notice when planning to leave.
- Pay the final rent.
- Contact utility providers to get the telephone, gas, water and electricity disconnected and pay the final bills.
- Leave the premises in good order and in the condition in which you found them, fair wear and tear excepted.
- Take all your belongings with you.
- Keep the 'Condition Report' in case any disputes arise.
- If you have paid a bond, reach agreement with the landlord or agent regarding the return of the bond.
- Complete and sign the 'Bond Claim' form, stating any agreed division of the bond money and keep a copy.
- Make sure the completed 'Bond Claim' form is sent to the RTBA.

- Confirm with your financial institution that the RTBA has credited the bond money to your account.
- Leave a forwarding address with your landlord or agent, the RTBA (on the 'Bond Claim' form) and Australia Post.
- Comply with all parts of the 'Residential Tenancy Agreement'.
- Comply with all regulations connected with the *Residential Tenancies Act 1997*.
- To rectify any situation, it is best to contact your tenant before taking further action.

Tips for landlords and agents

At the beginning of a tenancy

- Read and sign the 'Residential Tenancy Agreement', give the tenant a copy and keep a copy.
- Give the tenant a copy of this guide on renting premises in Victoria.
- Thoroughly check that the premises are completely safe.
- If taking a bond, complete and sign the 'Condition Report', give the tenant a copy and keep a copy.
- Complete and sign the 'Bond Lodgement' form and give the tenant their copy.
- Forward the bond money and the RTBA's copy of the 'Bond Lodgement' form to the RTBA.
- Ensure the RTBA receipt is received and keep a copy.
- Keep the 'Condition Report' in case any disputes arise.
- If you took a bond, reach agreement with the tenant regarding the bond money.
- Complete and sign the 'Bond Claim' form and make sure all the tenants sign it, and give the tenants their copy.
- Keep your copy of the 'Bond Claim' form.
- Ensure the completed 'Bond Claim' form is sent to the RTBA.
- Apply to VCAT within 10 business days if no agreement on the bond is reached.
- Comply with the *Residential Tenancies Act 1997* regarding the tenant's belongings and personal documents.
- See page 39 for details on 'Solving tenancy problems'.

At the end of a tenancy

“ Part one Beginning a tenancy ”

1

Applying for a tenancy

A ‘Residential Tenancy Application’ is available from Consumer Affairs Victoria and some estate agents. When applying to rent a property it’s important to be prepared. It is very likely that the landlord or agent will ask for formal identification such as a driver’s licence as well as employment details and referees.

The landlord or agent can only refuse when:

- the landlord usually lives in the property and will be returning
- the government has provided the property exclusively for single people or childless couples
- the property is unsuitable or inappropriate for children.

For information on discrimination in accommodation, contact Equal Opportunity Commission Victoria. The contact details are on page iv.

Tenants with children

Normally, a landlord or agent cannot refuse to rent a property to tenants with children.

It is discriminatory and therefore against the law to do so.

Tenancy agreements

A tenancy agreement is a legal contract between a tenant and a landlord or agent. The agreement covers the amount of rent to be paid and the method of payment, the length of time the tenant will rent the property, the amount of money required as refundable security bond, as well as other conditions and rules.

Tenancy agreements can be either verbal or written.

Written agreements must be on or follow the wording of the official 'Residential Tenancy Agreement' form which is available from Consumer Affairs Victoria. Agents sometimes use their own agreement forms which may include extra conditions. These are valid as long as they comply with the Act.

Verbal agreements are valid as long as they comply with the Act.

There are two types of tenancy agreements – fixed-term and periodic. A fixed-term agreement is for a set period of time, whereas a periodic agreement goes from week to week or month to month.

Even though a fixed-term agreement has an end date, it is still necessary for the tenant to give notice in writing or for the landlord to give a 'Notice to Vacate to Tenant/s of Rented Premises' where a tenant is to move out at the end of the agreement.

Refer to pages 30-31 for information on calculating minimum notice periods when giving a notice. If neither party gives notice to end a fixed-term agreement the agreement automatically becomes a periodic tenancy agreement.

For information about 'Ending a tenancy', see page 21.

Keeping the signed tenancy agreement

Before asking a prospective tenant to sign a 'Residential Tenancy Agreement', the landlord or agent must give the prospective tenant a copy of the unsigned Agreement.

In the event that both parties have signed the 'Residential Tenancy Agreement', the landlord or agent must give the tenant a copy of the signed agreement within 14 days. In addition, the landlord or agent must give the tenant a copy of this guide *on or before* the day the tenant moves in.

In limited circumstances, there are ways of ending a tenancy agreement before moving in. See page 9 or call Consumer Affairs Victoria on 1300 55 81 81.

Contact details

Landlord and agent contact details

The landlord or agent must give the tenant certain contact details in writing *on or before* the first day the tenant moves in.

The contact details are:

- the landlord or agent's full name, address, telephone and (agent's only) fax number
- an emergency telephone number that can also be used out of business hours.

A \$500 fine can be imposed on the landlord or agent if they do not provide these details *on or before* the first day of the tenancy agreement.

If any of the contact details change during the tenancy, the landlord or agent must tell the tenant in writing within seven days. A \$500 fine can be imposed for not doing this.

When an agent is managing the property, the agent must give certain information in writing to the tenant.

The information, which must be in writing, is:

- whether the agent can authorise urgent repairs and if so the maximum amount the agent can authorise
- the telephone or fax numbers to be used for urgent repairs.

Tenant contact details

The tenant should advise the landlord or agent immediately if their contact details, such as work or mobile telephone numbers, change during the tenancy.

Deposits and charges

The landlord or agent is permitted to accept a deposit from a prospective tenant.

This money must be refunded when the 'Residential Tenancy Agreement' is signed by both parties.

If no tenancy agreement is made within 14 days, the money needs to be refunded by the next business day.

A \$500 fine can be imposed for not refunding the money.

A landlord or agent cannot charge for:

- showing the premises to a prospective tenant
- issuing a rent payment card
- the establishment or use of direct debit facilities
- the making, continuing or renewing of a 'Residential Tenancy Agreement' (also known as a premium, bonus, commission or key money).

If the landlord or agent attempts to charge the tenant for any of the above services, a \$1000 fine can be imposed.

The bond

The bond is money tenants pay as a security deposit. If tenants fail to keep the premises clean, or cause damage, or don't pay rent, the landlord or agent can claim some or all of the bond at the end of the tenancy.

A landlord can also claim compensation from a tenant if the bond does not cover all the monetary losses incurred by the landlord.

The amount of the bond

If the rent is \$350 a week or less, the bond cannot be more than one months rent.

A landlord or agent who wants a higher bond must apply to the Victorian Civil & Administrative Tribunal (VCAT).

A fine of \$500 can be imposed if a landlord or agent requests a higher bond without permission from VCAT.

There are two circumstances where a landlord can take a bond of more than one months rent without going to VCAT. First is when the 'Residential Tenancy Agreement' states that the premises are the landlord's usual place of residence and the tenant is renting it until the landlord wishes to resume living in it. Second, if the rent is more than \$350 a week.

The bond cannot be increased during the tenancy.

Looking after the bond

The Residential Tenancies Bond Authority (RTBA) holds the bond during the tenancy.

If a landlord or agent takes a bond they must give the tenant a completed and signed official 'Bond Lodgement' form to sign. The RTBA needs the details and signatures on this form so it can pay out the bond at the end of the tenancy.

If there is a change of landlord or agent during the tenancy, or a new tenant takes over the tenancy, the RTBA must be notified and must receive official transfer forms. See page 15 for more information.

'Bond Lodgement' forms are available from Consumer Affairs Victoria and the RTBA. The top sheet is marked 'RTBA'. At the back, there is a 'Tenant' copy, which the tenant must be given as an interim receipt. There is another copy for the landlord or agent.

The landlord or agent must send the bond and the top sheet ('RTBA' copy) of the form to the RTBA within 10 business days of receiving the bond. There is a \$1000 fine for not doing so.

Payment must be made by cheque or money order payable to the 'Residential Tenancies Bond Authority'. The postal details are on page iv of this guide and on the 'Bond Lodgement' form.

Under the *Residential Tenancies Act 1997*, the RTBA invests the bond money. Interest on the Residential Bonds Account is paid to the Residential Bonds Investment Income Account. It is applied to meet the costs of administering the central bond management system and also contributes to the Residential Tenancies Fund.

Bonds from the Director of Housing (DoH)

Where the DoH is contributing some or all of the bond, a 'Bond Lodgement' form specifically designed for the DoH must be used. The DoH issues this form with the bond payment when a bond loan is approved.

Consumer Affairs Victoria also has copies of all the relevant forms and notices.

When a bond payment is dishonoured

If a bond payment to the RTBA is dishonoured (for example, if the funds are not cleared by the bank because the account does not have enough money in it), the bond cannot be lodged.

The RTBA notifies the tenant and the landlord or agent by post the day it is advised of the dishonoured payment. Landlords or agents can then organise to either collect the money and re-lodge the bond, or give the tenant a 'Notice to Vacate' for non-payment of the bond.

Providing a receipt

The RTBA must send a receipt to the tenant and the landlord or agent. Anyone who has not received the RTBA's receipt 15 business days after paying a bond should telephone the RTBA.

When the DoH provides a bond loan, it is advised of the bond lodgement.

Rent in advance

If rent is to be paid weekly, the landlord or agent cannot ask for more than 14 days rent at the beginning of a tenancy.

In any other case, provided the rent is \$350 a week or less, the landlord or agent cannot ask for more than one months rent in advance. If a landlord or agent does either of the above, a fine of \$1000 can be imposed.

It is the tenant's responsibility to pay rent and continue to pay rent when it is due. The person who receives the rent (usually the landlord or agent) must give the tenant a receipt for the rent. See page 12 for details.

The difference between the bond and the rent

The bond and the rent are separate payments. A tenant can be fined \$1000 for treating any part of the bond as rent.

Tenants must not stop paying rent because the landlord or agent refuses to do repairs, the 'Residential Tenancy Agreement' is in its last month, or the tenant has given the landlord notice of their intention to vacate or the landlord has given the tenant a notice to vacate.

Guarantees

A guarantee is an agreement where someone other than the tenant agrees to pay the landlord or agent for any losses as a result of the tenant's failure to follow the requirements of the 'Residential Tenancy Agreement' and the *Residential Tenancies Act 1997*.

Generally speaking, a landlord or agent cannot ask for a guarantee as well as a bond.

A landlord or agent can only ask for a guarantee as well as a bond when:

- the rent is more than \$350 a week, or
- the 'Residential Tenancy Agreement' states that the tenant is renting the landlord's own home until the landlord resumes living in the premises.

In any other circumstances, a \$1000 fine can be imposed if a guarantee is asked for in addition to the bond.

A guarantee cannot be more than the equivalent of one months rent unless:

- the rent is more than \$350 a week, or
- the 'Residential Tenancy Agreement' states that the tenant is renting the landlord's own home until the landlord resumes living in the premises.

The condition report

In cases where a bond has been paid, the landlord or agent must prepare a condition report on the premises. This report notes the general condition of the premises, including fittings and fixtures.

The landlord or agent must give two copies of the signed condition report to the tenant before the tenant occupies the premises. A \$500 fine can be imposed if this is not done.

The tenant must fill out and return the condition report to the landlord or agent within three business days of moving in.

The condition report is an extremely important document. It may be used as evidence if there is a dispute sometime in the future about who should pay for cleaning, damage, or replacement of missing items. All parties should keep their copy of the condition report until the end of the tenancy.

The landlord or agent may claim some or all of the bond for cleaning, damage, or replacement of missing items at the end of the tenancy. If the condition report stated that the work needed to be done at the start of the tenancy, or the items were not listed, it can help prove that the bond should be returned to the tenant.

Filling in the condition report

Consumer Affairs Victoria has a 'Condition Report' form that can be used. This form allows tenants, landlords and agents to rate the condition of the premises and items in the premises as clean, undamaged or working.

It is important that tenants make a note on the 'Condition Report' if they disagree on any points.

Tenants should take the time to check that everything that is attached to a ceiling, wall or a door (for example, light fittings, mantelpieces, hooks and handles) of the premises are fixed securely and aren't likely to injure anyone.

Tenants should check the safety of the premises and ask themselves the following questions.

- Are the curtain rods and blinds fixed securely to the wall?
- Are the light fittings likely to fall down from the ceiling or off the wall?
- Is there a gap between the wall and any cupboards or shelves?
- Does the stove rock forward when it is pushed or when the door is pulled open quickly?
- Does the mantelpiece feel and look stable?
- Will the built-in bookcases tip over or pull away from the wall when they are fully loaded?

Clean and vacant premises

- Are there any heavy structures (for example, tanks on stands, landscaping features, basketball hoops, or storage units) either inside or outside, which are not properly supported?
- Have any of the structural supports for stairs or verandas crumbled or become damaged?

This is not an exhaustive list and there may be other items in the house or flat which are unsafe. Any defects which may be a safety risk to tenants should be brought to the attention of the landlord or agent in writing so they can then be fixed by an expert.

If the problem is a safety risk and is not fixed, tenants can take further action. See the section on 'Repairs' on page 16.

If the problem is so serious that it makes the premises unsafe to live in, the tenant should notify the landlord immediately. If the problem cannot be fixed, the tenant may be able to end the tenancy agreement. It is best to get advice on this, contact Consumer Affairs Victoria on 1300 55 81 81.

The landlord or agent must make sure the premises are vacant and reasonably clean on the day the tenant is due to move in.

If the premises are not vacant or reasonably clean, the tenant:

- may be able to end the tenancy before moving in (see pages 28-29)
- can refuse to move in until they are vacant or reasonably clean.

The tenant does not have to pay rent while waiting for the premises to be vacated or made reasonably clean.

Water meter readings

In the Melbourne metropolitan area, if the premises have a separate meter, the landlord or agent can arrange for the tenant to be billed for water usage and sewerage disposal. In this case, the landlord needs to give the tenant's details to the water provider. The water provider will read the meter and bill the tenant from that point on.

In places outside the Melbourne metropolitan area, tenants moving into premises that have a separate meter must let the water provider know at least two business days before moving in. Otherwise, tenants will have to pay for the total amount of water supplied to the premises from the time of the last meter reading.

It is best to confirm the details in a letter to the water provider and keep a copy.

Getting connected to utilities

When starting a tenancy, tenants should contact the relevant utility providers to get the telephone, gas and electricity connected and arrange for the bills to be put in their name.

Some estate agents will offer the services of a connection company that can connect utilities for tenants. These are an optional service and by ticking the appropriate box on the property application form, tenants are only consenting to have the connection company telephone them. Tenants are under no obligation to tick the box. Tenants can choose the utility they want connected. However tenants should allow enough time to arrange any connections prior to moving into the premises.

“ *Part two* *During a tenancy* ”

2

Throughout the period of a tenancy, the tenant and landlord or agent may need to contact each other regarding issues such as rent increases, damage to the premises, sub-letting the premises, and ending the tenancy.

Important matters should always be communicated or confirmed in writing. Consumer Affairs Victoria has a range of forms available for this purpose, and using them is highly recommended. In many cases, these forms must be used.

It is vital that written communications are clear, include all the necessary details and are signed, and that copies are kept by all parties for future reference.

Paying rent

Tenants are responsible for paying rent. They must continue paying rent until the tenancy ends. If any rent payment is late or not made, the tenant is immediately behind with the rent. If the rent is 14 days or more behind, the landlord or agent can give the tenant notice to vacate.

Rent receipts

Tenants are entitled to a receipt for each rent payment.

The person who receives the rent, usually the landlord or agent, must:

- if the rent is paid in person, give the tenant a receipt immediately
- if the rent is not paid in person but the tenant requests a receipt, give a receipt within five business days
- if the rent is paid in person and a receipt is not requested, keep a record of the payment for 12 months and, on request, provide the tenant with a copy of the record within five business days.

A \$500 fine can be imposed if the rules on providing rent receipts are not followed.

A rent receipt must be signed by the landlord or agent.

A rent receipt must also state:

- the tenant's name
- the address of the premises
- the date the money was paid
- what period the payment was for
- how much was paid
- that it is a receipt for rent.

Water expenses

If the property has its own meter, the tenant is required to pay for water consumption and, in the Melbourne metropolitan area, sewerage disposal unless the landlord has agreed to pay these charges.

The landlord or agent must pay all other charges related to water supply although different rules may apply when a tank is the main source of water supply.

If tenants need information they should contact Consumer Affairs Victoria on 1300 55 81 81.

Replacing water appliances

If the landlord or agent replaces any water appliance, fitting or fixture and the replacement does not have at least a Standards Australia 'A' rating, the landlord or agent is responsible for all water consumption charges until an 'A' rated item is installed.

An 'A' rated appliance will have an 'A' on it. Products in this category prevent water waste and may save money.

Other utility and service charges

The landlord or agent must pay all installation and initial connection costs for electricity, gas and oil supply. If there is a separate meter, all other charges for electricity, gas and oil must be paid by the tenant, unless otherwise agreed. If there isn't a separate meter, the landlord or agent must pay. Where bottled gas is provided, the landlord or agent pays for the supply or hire of bottles, and the tenant pays for the gas.

The landlord or agent must reimburse the tenant if the tenant has paid the costs of any utilities for which the landlord is liable.

The landlord or agent must pay back the tenant for any rates or taxes paid to a public authority that are not part of consumption charges for the service. However, the tenant may be responsible for these costs if the agreement is for a fixed period of more than a year.

Director of Housing (DoH) tenants, including community rooming house tenants, may be charged separately for expenses such as heating and laundry.

Looking after the premises

Tenants, landlords and agents have a number of responsibilities during a tenancy.

Responsibilities of the tenant

The tenant must:

- keep the premises reasonably clean, unless the 'Residential Tenancy Agreement' says the landlord or agent must do this
- not cause damage
- notify the landlord or agent in writing as soon as possible if any damage is done
- avoid causing a nuisance to neighbours
- make sure that they and their visitors respect the rights of neighbours in regard to privacy, peace and comfort
- make sure the premises are not used for any illegal purpose

- get the landlord's or agent's permission, preferably in writing to:
 - change a lock in a master key system
 - install fixtures
 - make additions or alterations or do renovations
- give the landlord or agent a key as soon as possible after changing any lock.

It is very important to remember that, unless otherwise agreed, the tenant must restore the premises to the condition they were in immediately before the installation of fixtures, additions, alterations or renovations, fair wear and tear excepted.

Responsibilities of the landlord and agent

The landlord or agent must:

- *on or before* the occupation date, give the tenant a copy of this guide
- keep the premises and common areas in good repair
- ensure that any replacement water appliance, fitting or fixture has at least a Standards Australia 'A' rating
- make sure all external doors have locks, and windows can be secured
- give the tenant a key as soon as possible after changing any lock
- let the tenant have peace and quiet in the premises
- not enter the premises to carry out a general inspection until after the end of the first three months of the tenancy and even at this time, follow the rules regarding proper notice periods.

Sub-letting the premises

The tenant must get the landlord's or agent's written permission before assigning or sub-letting the premises or any part of the premises.

It's a good idea to seek professional advice when considering sub-letting the premises and before finalising any agreement.

The landlord or agent must give permission for the tenant to sub-let the premises unless there is a good reason to refuse. It is illegal to charge a fee for giving permission.

If a tenant believes a landlord or agent is withholding consent unreasonably, they can apply to the Victorian Civil & Administrative Tribunal (VCAT) for a ruling.

Where a tenant is living in public housing, the landlord is generally permitted to refuse consent.

If the landlord or agent gives permission for the tenant to sub-let the premises and the tenant takes a bond from a sub-tenant, it is then the tenant's responsibility to lodge the bond. The tenant must lodge the sub-tenant's bond money with the Residential Tenancies Bond Authority (RTBA) within 10 business days of taking the money. The RTBA will consider the tenant as a landlord for this purpose.

New tenants or new landlords or agents

It is important to remember that the RTBA will only pay out the bond money to the person registered as the bond holder.

If a new landlord or agent takes over the property, the previous landlord and the new landlord and their respective agents must complete and sign an 'Agent/Landlord Transfer' form and send it to the RTBA within five days of the changeover. The new landlord or agent must also give a copy of the form to the tenant.

If a new tenant moves in under the existing tenancy, the landlord or agent, the current tenant and the incoming tenant must complete and sign a 'Tenant Transfer' form to change ownership of the bond. The form must be sent to the RTBA within five days of the new tenant moving in.

A \$1000 fine can be imposed for not sending a transfer form to the RTBA.

Repairs

The Act distinguishes between urgent and non-urgent repairs. Urgent and non-urgent repairs are the landlord's or agent's responsibility, but if the tenant caused the damage, the landlord can ask the tenant to arrange and/or pay for repairs.

There are set procedures that tenants, landlords and agents must follow when dealing with urgent or non-urgent repairs. Tenants must continue to pay rent even when waiting for repairs to be done.

However, if the matter has gone to VCAT, the tenant can apply for the rent to be paid into a special account while the issue is being sorted out.

It is extremely important to communicate all information regarding repairs in writing and that all copies of letters, forms and reports are kept for future reference. It is preferable that the forms from Consumer Affairs Victoria are used.

Urgent repairs

Repairs are considered to be urgent if they are needed to fix:

- a burst water service
- a blocked or broken toilet system
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of any essential service or appliance provided by the landlord or agent for hot water, water, cooking, heating, or laundering
- a failure or breakdown of the gas, electricity, or water supply
- any fault or damage in the premises that makes the premises unsafe or insecure
- an appliance, fitting, or fixture which is not working properly and causes a substantial amount of water to be wasted
- a serious fault in a lift or staircase in the rented premises.

Urgent repairs scenarios

If possible, seek advice on whether your repair is urgent or non-urgent. Ideally, the tenant, landlord or agent should agree that a particular repair job is urgent.

Scenario 1. A tenant contacts the landlord or agent and the landlord or agent agrees to do the urgent repairs.

If a tenant requests urgent repairs the landlord or agent must respond without delay.

Scenario 2. A tenant contacts the landlord or agent and they do not do the urgent repairs quickly.

If the landlord or agent does not respond quickly, the tenant can arrange for the repairs to be done for a reasonable cost, up to a value of \$1000. (If it is going to cost more than \$1000, see scenario number 3.)

The tenant can then give the landlord or agent a notice in writing requesting that they be paid back for the cost of the urgent repairs.

The landlord or agent has 14 days from receiving the notice to pay the tenant for the urgent repairs.

The tenant should keep all receipts and a record of their attempts to arrange the urgent repairs with the landlord or agent.

Scenario 3. The landlord or agent does not do the urgent repairs and the repairs are going to cost more than \$1000.

The tenant can apply to VCAT which will hear the application within two business days of receiving the application. VCAT can order the landlord or agent to do the repairs.

Scenario 4. The landlord or agent does not do the urgent repairs and the tenant cannot afford to pay for them.

The tenant can apply to VCAT which will hear the application within two business days of receiving the application. VCAT can order the landlord or agent to do the repairs.

Scenario 5. The tenant has paid for urgent repairs but the landlord or agent refuses to pay back the money after the tenant has sent them a 14 day notice to pay the costs.

The tenant can apply to VCAT which will hear the application and hand down a decision. VCAT can order the landlord or agent to pay the tenant for the cost of the repairs.

See page iv for VCAT's contact details.

Non-urgent repairs

For non-urgent repairs, the tenant needs to write to the landlord or agent telling them what needs to be repaired. Tenants should use Consumer Affairs Victoria's 'Notice to Landlord of Rented Premises' form. The landlord or agent then has 14 days in which to make sure the repairs are carried out.

If the landlord or agent does not carry out the repairs within 14 days of receiving the notice, the tenant can send a copy of their written notice to Consumer Affairs Victoria with a letter asking for an inspection and a subsequent report.

If the repairs still haven't been done after the tenant has received the inspection report from Consumer Affairs Victoria, the tenant has 60 days from when they receive the report in which to apply to VCAT for a repair order.

Tenants must continue to pay rent even if the landlord or agent has not arranged for the repairs to take place. However, if the matter has gone to VCAT the tenant can apply for the rent to be paid into a special account while the issue is being sorted out.

Entry to the premises by the landlord or agent

There are rules on when a landlord or agent is allowed to enter a rented premises.

Entry at agreed times

A landlord or agent may enter the premises as long as the tenant agreed to the time and was consulted not more than seven days in advance.

Entry with 24 hours notice

A landlord or agent has the right to enter with 24 hours written notice to the tenant in order to do any of the following.

- Carry out duties under the 'Residential Tenancy Agreement', the *Residential Tenancies Act 1997* or any other Act.
- Value the property.
- Show prospective buyers or lenders through the premises.
- Show prospective tenants through the premises.¹
- Verify a reasonable belief that the tenant has not met their duties as a tenant.
- Make one general inspection in any six-month period, but not within the first three months of the tenancy.

The notice must be hand delivered between the hours of 8.00am and 6.00pm or posted (allow extra time for postage period).

Where a landlord or agent has provided a notice in writing for one of the reasons listed on this page, with at least 24 hours notice to carry out one or more of these tasks, they are only allowed to enter between 8.00am and 6.00pm, and not on public holidays.

If the tenant is home, they must let the landlord or agent in. The landlord or agent is allowed to enter the premises if the tenant is not home providing the requirements regarding written notices have been met.

¹ Landlords or agents can only do this within 14 days of the termination date specified in the notice from either the tenant or the landlord or agent regarding vacating.

What landlords and agents cannot do

Whether entering at an agreed time, or on 24 hours notice, the landlord or agent does not have the right to:

- enter in an unreasonable way
- stay any longer than necessary to do what is required, unless it is with the tenant's permission.

A \$500 fine can be imposed if a landlord or agent enters in a way that contravenes the *Residential Tenancies Act 1997*.

Rent increases

If the tenancy agreement is a fixed-term agreement, the landlord or agent cannot increase the rent before the end date, unless the agreement states otherwise.

In any case, a landlord or agent must not increase the rent payable under a tenancy agreement more than once in any six-month period.

The landlord or agent must give the tenant at least 60 days notice of any rent increase using the 'Notice of Rent Increase to Tenant/s of Rented Premises' form.

When a tenant thinks the rent is too high

In certain circumstances, tenants can write to the Director of Consumer Affairs Victoria for a rental assessment if they think the rent or proposed rent is too high.

This can only happen when:

- the landlord or agent has given a 'Notice of Rent Increase to Tenant/s of Rented Premises' that the tenant thinks is excessive (after considering market rent) or
- the landlord or agent has reduced or withdrawn services, facilities or other items that are part of the existing tenancy agreement.

A request for a rental assessment must be made in writing within 30 days of receiving the 'Notice of Rent Increase to Tenant/s of Rented Premises'.

The tenant has 30 days from receiving the rent assessment report in which to apply to VCAT for a hearing. VCAT may set a maximum rent, which then stays in force for 12 months.

“ *Part three* *Ending a tenancy* ”

3

There are set ways, under the Act, of ending all tenancy agreements, including verbal agreements, fixed-term agreements and periodic agreements.

Even if an agreement has a fixed end date, notice must be given to end the tenancy.

If a tenant, landlord or agent wants to end a tenancy agreement they should check:

- the reasons allowed under the Act for giving a notice to end a tenancy agreement
- whether the notice should be given on an official notice or form
- the minimum notice period to allow between giving notice and the actual end of the tenancy agreement.

See pages 30-31 for details on calculating minimum notice periods.

Read the following pages carefully and, if necessary, seek advice from Consumer Affairs Victoria on 1300 55 81 81.

Simply leaving a tenancy and stopping rent payments is a breach of the contract between the tenant and the landlord. The Victorian Civil & Administrative Tribunal (VCAT) can award compensation to landlords or agents for money lost because of this breach of contract.

Also, a landlord or agent can be fined up to \$2000 for trying to force a tenant to leave, either physically or in some other way not covered by the Act.

Ways of ending tenancy agreements

Tenancy agreements can only be ended in ways that are legal under the Act.

It is extremely important to know that when a tenant or landlord or agent attempts to end the tenancy agreement in a way that is not legal under the Act, the attempt is invalid.

There are three main ways to end a tenancy agreement, including:

- agreement of all parties to end the tenancy early, or
- a landlord or agent gives a 'Notice to Vacate' to the tenant, or
- a tenant gives notice to the landlord or agent that they intend to vacate.

In cases of severe hardship, VCAT can end a fixed-term tenancy early.

Agreeing to end a tenancy early

The tenant and the landlord or agent can agree to end the tenancy early. However, even if everyone agrees, it is important to put the decision in writing. The document should include any agreed costs, terms and conditions, and the date the tenancy is to end.

Ending a tenancy because of hardship

If the parties cannot agree, a party who wants to end the tenancy early because of severe hardship can apply to VCAT to reduce the period of a fixed-term agreement.

VCAT can reduce the period of the tenancy agreement if:

- staying and/or paying to the end could cause serious hardship for the tenant
- the effect on the tenant would be greater than the effect on the landlord
- the tenant did not know at the start of the tenancy that the problem was going to occur.

VCAT can also reduce the period of the tenancy agreement if:

- letting the tenant stay to the end could cause serious hardship for the landlord
- the effect on the landlord would be greater than the effect on the tenant
- the landlord did not know at the start of the tenancy that the problem was going to occur.

VCAT can also order that compensation be paid to the other person by the person who has applied for the reduced time of the tenancy agreement.

When the landlord or agent wants to end a tenancy agreement

When a landlord or agent wants to end a tenancy agreement, they must complete the official 'Notice to Vacate to Tenant/s of Rented Premises' form.

The 'Notice to Vacate' form:

- is addressed to the tenant
- is signed by the landlord or agent
- gives a reason (unless it is a 'Notice to Vacate' for no specified reason)
- gives the date the tenant is to leave.

The 'Notice to Vacate' must be:

- sent by registered post addressed to the tenant at the rented premises, or
- given to the tenant in person.

Reason for giving a 'Notice to Vacate to Tenant/s of Rented Premises'

Damage is maliciously caused to the premises or common areas by tenant or tenant's visitor.

Tenant or tenant's visitor put neighbours in danger.

cont.

Reasons and minimum notice periods when a landlord or agent gives a 'Notice to Vacate'

There are a number of reasons allowed under the Act for ending a tenancy agreement.

The following table is relevant for ending both fixed-term and periodic agreements.

Minimum notice period for each reason

(Allow extra time whether mailing or delivering by hand. Check pages 30-31 to calculate the extra time correctly.)

Immediate notice

Immediate notice

Reason for giving a 'Notice to Vacate to Tenant/s of Rented Premises'	Minimum notice period for each reason (Allow extra time whether mailing or delivering by hand. Check pages 30-31 to calculate the extra time correctly.)
If the premises are: <ul style="list-style-type: none"> • totally destroyed • partly destroyed and unsafe • unfit to live in. 	Immediate notice
Tenant owes at least 14 days rent.	14 days
Tenant has breached a VCAT compliance order or compensation order.	14 days
Tenant has already been given two 'Breach of Duty' notices and the same problem occurs.	14 days
The premises are being used for illegal purposes.	14 days
Other tenants are brought in without consent.	14 days
Tenant did not pay the bond as agreed.	14 days
Tenant has a child living at the premises when the agreement is one which does not allow children.	14 days
Landlord is a government housing authority and tenant misled the authority so they could be accepted as a tenant.	14 days

When the landlord or agent gives one of these reasons for ending a tenancy, the tenancy end date noted on the 'Notice to Vacate' cannot be before the end date of the fixed-term tenancy agreement.

Reason for giving a 'Notice to Vacate to Tenant/s of Rented Premises'

Minimum notice period for each reason
(Allow extra time whether mailing or delivering by hand. Check pages 30-31 to calculate the extra time correctly.)

The tenancy agreement has a fixed-term or set end date and states that the tenant has rented the landlord's own home and the landlord will occupy it at the end of the tenancy agreement.

14 days

Planned reconstruction, repairs or renovations (for which all necessary permits have been obtained) cannot be properly carried out unless the tenant vacates.

60 days

The premises are to be demolished and all necessary permits have been obtained.

60 days*

The landlord wants to do something else with the premises, for example, use them for a business.

60 days*

The landlord or a member of the landlord's immediate family (including parents and parents-in-law) or a dependant of the landlord will be moving in who normally lives with the landlord.
cont.

60 days*

Reason for giving a 'Notice to Vacate to Tenant/s of Rented Premises'	Minimum notice period for each reason (Allow extra time whether mailing or delivering by hand. Check pages 30-31 to calculate the extra time correctly.)
The premises are to be sold or offered for sale with vacant possession immediately after the termination date of the 'Residential Tenancy Agreement'.	60 days*
The premises have been sold and any conditions of the sale have been satisfied.	60 days*
A government authority owns the premises and needs them for public purposes.	60 days
It is the end of a fixed-term tenancy agreement of less than six months.	60 days
It is the end of a fixed-term tenancy agreement of six months or more.	90 days
The landlord is a government housing authority and the tenant no longer meets its eligibility criteria.	90 days
No specified reason, but not just because tenants have been exercising their rights or saying they will do so.	120 days

* NOTE on re-letting

Unless the landlord or agent has permission from VCAT, they cannot re-let the property for six months after giving a 60-day notice for these reasons.

When the tenant wants to end a tenancy agreement

Tenants are advised to use the 'Notice to Landlord of Rented Premises' form available from Consumer Affairs Victoria.

In cases of severe hardship a tenant can apply direct to VCAT to end the tenancy early, see page 22 for details or contact Consumer Affairs Victoria on 1300 55 81 81.

The tenant must give the landlord or agent the correct amount of written notice when ending a tenancy agreement.

The tenant's notice of intention to vacate must:

- be in writing
- be signed by the tenant or the tenant's representative
- give a reason, if applicable (see table on page 28)
- give the date the tenant plans to leave, taking into account the amount of time required for notice under the Act (see table on page 28).

Delivering a notice of intention to vacate must be done in one of the following ways.

- Delivered personally to the landlord or agent.
- Left for the landlord or agent at their residence or business with a person apparently over the age of 16 years and apparently living or employed there.
- If the landlord or agent is a corporation, given to an authorised officer of the corporation employed at its registered office.
- Posted to the landlord or agent at their residence or business or, if the landlord or agent is a corporation, posted to the corporation's registered Victorian address.

It's a good idea to use registered post so there is proof when and where the notice was sent.

Refer to pages 30-31 for information on minimum notice periods.

Reasons and minimum notice periods when a tenant gives a notice of an intention to vacate

The minimum amount of time required for the notice depends on the reason for giving it.

Reason for giving written notice of an intention to vacate to the landlord or agent	Minimum notice period for each reason (Allow extra time whether mailing or delivering by hand. Check pages 30-31 to calculate the extra time correctly.)
Before the tenant moves in, the premises are: <ul style="list-style-type: none">• not vacant*• not in good repair*• totally destroyed• partly destroyed and unsafe• unfit for human habitation*• not legally available as a residence• not available for occupation.	Immediate notice
During the tenancy the premises are: <ul style="list-style-type: none">• totally destroyed• partly destroyed and unsafe• unfit for human habitation.	Immediate notice
Landlord has breached a VCAT compliance order or compensation order.	14 days
Tenant has already given two 'Breach of Duty' notices to the landlord or agent and the same breach has occurred.	14 days
Cont.	

Reason for giving written notice of an intention to vacate to the landlord or agent

Minimum notice period for each reason
(Allow extra time whether mailing or delivering by hand. Check pages 30-31 to calculate the extra time correctly.)

Tenant requires temporary crisis accommodation.

14 days, however, if there is a fixed-term tenancy agreement, the end date on the notice cannot be before the end date of the agreement.

Tenant requires special or personal care.**

14 days, however, if there is a fixed-term tenancy agreement, the end date on the notice cannot be before the end date of the agreement.

Tenant is offered public housing.

14 days, however, if it is a fixed-term tenancy agreement, the end date on the notice cannot be before the end date of the agreement.

Any other reason.

28 days, however, if it is a fixed-term tenancy agreement, the end date on the notice cannot be before the end date of the agreement.

***Immediate notice before tenant moves in (premises not vacant, not in good repair or unfit for human habitation):**

To avoid later dispute and a possible compensation claim, Consumer Affairs Victoria suggests that tenants advise the landlord or agent of the problem and allow a reasonable time for response before giving notice that they will not be moving in.

****Special or personal care means:**

- assistance with one or more of the following:
 - Bathing, showering or personal hygiene.
 - Toileting.
 - Dressing or undressing.
 - Meals.
 - Physical assistance for persons with mobility problems.
 - Assistance for persons who are mobile but require some form of supervision or assistance.
 - Assistance or supervision in dispensing medicine.
 - The provision of substantial emotional support in a health or residential service.

Calculating minimum notice periods

When giving a notice it is important to add extra time to the minimum notice period when sending the notice by mail and when giving it in person.

The following table shows the total number of days to allow when a notice is sent by registered post.

When sending by post, more days should be added for any public holidays that fall within the postal period.

Minimum notice period	Posted on Monday	Posted on Tuesday	Posted on Wednesday	Posted on Thursday	Posted on Friday
Immediate	3	3	3	5	5
14 days	18	18	18	20	20
28 days	32	32	32	34	34
60 days	64	64	64	66	66
90 days	94	94	94	96	96
120 days	124	124	124	126	126

The following table shows the total number of days to allow when a notice is given to the other party by hand.

Minimum notice period	Given on Monday	Given on Tuesday	Given on Wednesday	Given on Thursday	Given on Friday
Immediate	-	-	-	-	-
14 days	16	16	16	16	16
28 days	30	30	30	30	30
60 days	62	62	62	62	62
90 days	92	92	92	92	92
120 days	122	122	122	122	122

When a tenant receives a notice to vacate

If the tenant receives a 'Notice to Vacate' they can move out or:

- challenge the notice if they believe they have a reason allowed under the Act, or
- ask for more time before they have to move out.

Reasons allowed under the Act for challenging a 'Notice to Vacate'

Tenants have the right to challenge the validity of any 'Notice to Vacate'.

Tenants can argue against the notice if it is not given properly or if they disagree with the reason given.

Tenants also have the right to challenge a 'Notice to Vacate' given for no specified reason or to end a fixed tenancy, if they believe it was given because they were exercising their rights under the Act or saying they would do so.

How to challenge a 'Notice to Vacate'

Tenants must apply to VCAT to challenge a notice within specific timeframes depending on the reason and the minimum time period of the notice.

Tenants must apply to VCAT within:

- 60 days of receiving a 120 day 'no specified reason' notice
- 28 days of receiving a 90 day notice to end a fixed-term agreement
- 21 days of receiving a 60 day 'end of fixed-term' notice
- 30 days of receiving any other 60 day notice.

Special notice requirements

If a landlord or agent has given a 60 day or longer 'Notice to Vacate', the tenant can avoid staying until the end of the notice period by giving their own 14 day notice. However, if it is a fixed-term tenancy agreement, the end date on the tenant's notice cannot be before the end of the fixed term.

Asking for more time to vacate

Tenants can also argue against a notice if it would be difficult for them to move out without an extension of time.

VCAT can make special allowances when making a decision to avoid severe hardship to tenants or landlords.

When the notice period runs out and the tenant has not left

If the notice period given by the tenant, landlord or agent to end the tenancy has run out and the tenant has not left, the landlord or agent can seek a VCAT order for possession instructing the tenant to vacate. This enables the police to carry out an eviction.

VCAT hearings for applications for possession

The tenant has the right to attend a hearing and give evidence. VCAT will hear and consider both sides. VCAT can deal with rental arrears notices and end of fixed-term notices without a hearing if the landlord or agent follows the requirements of the alternative procedure set out in the Act, and the tenant does not object.

Where the landlord or agent uses the alternative procedure, tenants who want a hearing should immediately complete the objection form given to them by the landlord or agent, lodge it with VCAT, and also send a completed copy to the landlord or agent.

“ *Part four* *Leaving a tenancy* *after giving or* *receiving notice* ”

4

The bond

At the end of a tenancy the tenant and the landlord or agent should attempt to agree on how the bond money is to be divided up. For example, there may be some rent unpaid, or there may be some property damage which needs to be repaired. The agreed division should be set out in the ‘Bond Claim’ form, which is sent to the Residential Tenancies Bond Authority (RTBA).

Tenants should never sign a blank ‘Bond Claim’ form.

The RTBA will not accept a ‘Bond Claim’ form if it has been altered in any way. If a tenant, or landlord or agent needs to make any changes to the form, they must complete a new ‘Bond Claim’ form.

When any part of the bond is to be paid to the landlord or agent, the form cannot be signed more than seven days before the end of the tenancy.

Reclaiming the bond

When the RTBA receives a correctly completed 'Bond Claim' form, it pays the bond directly into the nominated bank account/s overnight.

Where there is a shared tenancy, the RTBA does not make part-payment of bonds to outgoing tenants during the course of a tenancy. Adjustments of contributions to the bond between outgoing and incoming tenants are a private matter between the tenants, however the RTBA must be told about any change of tenants during a tenancy on the RTBA 'Tenant Transfer' form.

When the landlord cannot locate a tenant and rent is owing

If a tenant's whereabouts are unknown and rent is owing, the landlord or agent has 10 business days in which to apply to the Victorian Civil & Administrative Tribunal (VCAT) for an order directing the RTBA to repay the bond to the landlord or agent to cover the rent.

The application must follow VCAT's procedures and must be verified by an affidavit.

VCAT can make a determination to distribute the bond money without a hearing or refer the matter for a hearing and a decision. In this case, the landlord or agent then lodges the determination and a completed 'Bond Claim' form with the RTBA.

Bonds provided by the Director of Housing (DoH)

Where the DoH provided a bond loan, the tenant is not permitted to agree to the release of any of the bond to the landlord or agent.

The RTBA will pay out the bond to the DoH at the end of the tenancy once it receives the completed 'Bond Claim' form.

If a 'Bond Claim' form is not lodged, the DoH will not know that the tenancy has ended and the bond amount will remain registered as an outstanding debt against the tenant.

If there is any claim by the landlord on a bond provided by the DoH, the claim must be heard by VCAT.

When a landlord makes a claim on the bond

In some circumstances the landlord may make a claim on the bond.

A landlord or agent can make a claim on the bond for:

- damage caused by the tenant or the tenant's visitors
- cleaning expenses
- the tenant abandoning the premises
- the tenant leaving the landlord to pay bills that the tenant should have paid
- loss of the landlord's goods
- unpaid rent.

Costs due to fair wear and tear cannot be claimed.

If there is disagreement about the division of the bond, the landlord must apply to VCAT within 10 business days of the tenant vacating the premises.

Landlord claiming compensation

The landlord or agent may also claim compensation over and above the amount of the bond. In such cases, the landlord or agent needs to make a separate application to VCAT for compensation.

Final water meter readings

Tenants who have a separate water meter should let the water provider know in advance that they will be moving out. Not doing so may result in tenants being charged for water in the next billing period.

Belongings left behind

Tenants should take belongings with them and leave a forwarding address when they end a tenancy.

If any personal documents or goods are left behind, arrangements should be made for them to be collected by the tenant. If these arrangements cannot be made, there are procedures landlords can follow.

The landlord or agent cannot refuse to give back any of a tenant's belongings, even if the tenant owes rent.

A tenant who suffers a loss because the landlord or agent did not comply with the legislation can apply to VCAT to be compensated.

If, in complying with the legislation, a landlord or agent stores and auctions the goods and suffers a loss, they can also apply to VCAT to be compensated.

Personal documents

Personal documents include official documents, photographs, correspondence, and any other documents which a person would reasonably be expected to keep.

When personal documents are left behind the landlord or agent must:

- take reasonable care of the documents for at least 90 days
- let the tenant reclaim the documents after paying back any money the landlord or agent had to spend to remove and care for them.

A \$2000 fine can be imposed for not letting a tenant reclaim documents when they were willing to pay a reasonable amount to cover those costs.

If a landlord or agent complies with the requirements set out in the Act and the tenant does not claim the documents, the landlord or agent can dispose of the documents.

The landlord or agent can then apply to VCAT to be compensated for the cost of looking after and removing the documents.

Goods

Goods that can be disposed of

The requirements under the Act do not apply to perishable foods or goods that are dangerous or of no monetary value. In such cases the goods may be disposed of, regardless of their total value.

All other goods need to be stored unless removal, notification, storage and auction costs for the goods would be more than the auction proceeds. Landlords and agents can assess whether under the Act the goods can be disposed of or must be stored. Alternatively they can request that Consumer Affairs Victoria inspect the goods and make a formal assessment. To request an inspection, write to the Director of Consumer Affairs Victoria at the address on the back cover. A 'Request for Inspection of Goods Left Behind' form is available from Consumer Affairs Victoria.

Goods that must be stored

If a tenant leaves goods behind in the rented premises which are not allowed to be disposed of, the landlord or agent is required to follow set timelines and procedures including:

- storing the goods for 28 days
- notifying the tenant, either by notice to the tenant's forwarding address or by advertising in a daily newspaper within seven days of storage, that the goods can be collected from the landlord or agent
- letting the tenant reclaim the goods after they have paid the costs to cover any reasonable expenses incurred by the landlord or agent in complying with the Act.

The Act sets out the procedure for:

- selling the goods at auction after the required storage period has ended
- claiming the costs of storage, advertisement and sale
- dealing with excess money raised by the sale of goods left behind.

A \$1000 fine can be imposed for not allowing a tenant to reclaim goods when they were willing to pay a reasonable amount to cover those costs.

There are specific procedures for disposing of goods. Contact Consumer Affairs Victoria on 1300 55 81 81 for more information.

Providing a forwarding address

It's a good idea for tenants to leave a forwarding address and phone number when leaving a tenancy. The new address and telephone number should be given to the landlord or agent, and also to VCAT (if an application has been made) and the RTBA on the 'Bond Claim' form. This will make it easier for all concerned if the tenant needs to be contacted for any reason, especially if a tenant needs to receive bond money.

Tenants can also get their mail forwarded to their new address by completing a form at any Australia Post office. There may be a fee for this service.

“ *Part five* *Solving tenancy* *problems* ”

5

Ideally, tenants and landlords or agents should solve any problems by coming to an agreement. Of course, the agreement must be within the law. To prevent future problems, any agreement should be put in writing and signed by both parties.

If a tenant or a landlord or agent wants to enforce their rights under the law, they usually have to give a formal notice explaining the issue to the other person. The relevant notices are available from Consumer Affairs Victoria.

A notice always needs to state what the tenant or landlord or agent wants done and when it must be done by. The amount of time to comply with the notice varies and depends on the type of problem.

Notices other than a ‘Notice to Vacate’ should be:

- delivered in person to the tenant or landlord or agent, or
- if the person is a corporation, given to an authorised officer of the corporation who is employed at its registered office, or
- left for the person at their home or business address with a person apparently over 16 years of age and apparently living or employed there, or
- posted to the person at their residence or business or if the person is a corporation, to the corporation’s registered Victorian address (it’s a good idea to use registered post).

See page 23 for more details on giving a ‘Notice to Vacate’.

Using the Victorian Civil & Administrative Tribunal (VCAT)

VCAT has a Residential Tenancies List specifically for hearing disputes between landlords and tenants.

Application forms are available from VCAT (www.vcat.vic.gov.au) and Consumer Affairs Victoria.

An application to VCAT should include:

- a completed and signed application form
- payment for lodging an application (except for bond claims)
- copies of all notices that have been given or sent
- copies of any other documents which are important for the claim such as receipts, letters, photographs, statutory declarations, and reports from the Director of Consumer Affairs Victoria. The originals of these documents must be available at the VCAT hearing.

Usually, the only cost involved in the hearing is the application fee. In exceptional circumstances this fee may be waived, depending on set criteria regarding income and social security status. Tenants, landlords and agents should contact VCAT or Consumer Affairs Victoria on 1300 55 81 81 for information on the fee waiver.

Hearing date and time

VCAT informs the tenant and the landlord or agent of the date, time and place of the hearing. VCAT should be contacted for advice on seeking an adjournment or rehearing.

How VCAT operates

VCAT hearings take place in country Victoria as well as in the city and suburbs. The hearings are open to the public.

It is important to be as well prepared as possible. Tenants should contact Consumer Affairs Victoria on 1300 55 81 81 for help in preparing for any hearing.

The VCAT Member, who is a lawyer, will hear and consider all the evidence from both sides. This includes evidence from witnesses, and looking at photographs and other documents brought to the hearing by the tenant and the landlord or agent.

VCAT, in exceptional circumstances, may order one side to pay the other side's costs.

VCAT's decisions are usually made on the day of the hearing. They must be obeyed by the tenant and the landlord or agent in the same way as a court order needs to be complied with.

Urgent VCAT cases

In cases of extreme hardship, tenants, landlords and agents can ask for their case to be heard quickly. A letter explaining why must be sent along with the application.

Interpreters at VCAT

VCAT can provide interpreters but only for the parties involved in the dispute – not for witnesses or friends. If an interpreter is required, VCAT needs to be told at the time of making the application. VCAT will then arrange for an interpreter free of charge. Friends or relatives are generally not allowed to interpret for a tenant, landlord or agent at a hearing.

Consumer Affairs Victoria

Victorian Consumer & Business Centre

113 Exhibition Street

Melbourne Victoria 3000

Telephone 1300 55 81 81 (local call charge)

Facsimile (03) 8684 6295

Email consumer@justice.vic.gov.au

Website www.consumer.vic.gov.au

TIS 131 450

Textphone (TTY) or modem users only, ring the NRS on 133 677, then quote 1300 55 81 81.

Callers who use Speech to Speech Relay dial 1300 555 727, then quote 1300 55 81 81.

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This guide is also available in:

Arabic, Chinese, Greek, Italian, Russian, Serbian, Turkish and Vietnamese.

