

RENTING IN TASMANIA

A Guide For Property Owners, Property Managers, Tenants, And Tenant Advocates.



Tasmania

Consumer Affairs and Fair Trading

Hotline : 1300 65 44 99 www.consumer.tas.gov.au

Languages other than English

English

Renting in Tasmania

If you have difficulty understanding English, contact the Translating and Interpreting Service on 131 450 and they will telephone the Office of Consumer Affairs and Fair Trading.

Español/Spanish

Alquilar una vivienda en Tasmania

Si tiene Ud dificultades en expresarse en inglés, llame al Servicio de Traducción e Interpretación, número 131450 para que le pongan en contacto con la Oficina de Asuntos del Consumidor y de Prácticas Comerciales Equitativas.

Ελληνικά/Greek

Ενοικιάσεις στην Τασμανία

Εάν έχετε δυσκολία στο να καταλαβαίνετε Αγγλικά, ελάτε σε επαφή με την Υπηρεσία Μεταφραστών και Διερμηνέων στο 131 450 και αυτοί θα τηλεφωνήσουν το Γραφείο Προστασίας του Καταναλωτή και Δικαίας Μεταχείρισης Εμπορίου

Italiano/Italian

Vivere in affitto in Tasmania

Se incontra difficoltà con l'inglese, può telefonare al Servizio Traduttori e Interpreti al 131 450 che telefonerà all'Ufficio per la tutela dei diritti del consumatore e l'equo commercio.

Српски језик/Serbian

Изнајмљивање на Тасманији

Ако имате тешкоћа са Енглеским језиком, позовите службу преводилаца и Тумача на 131 450 и они ће телефонирати Канцеларији за потрошачка питања и поштену трговину.

Hrvatski jezik/Croatian

Iznajmljivanje na Tasmaniji

Ukoliko s teškoćama razumijete engleski, kontaktirajte Službu prevodilaca i tumača na 131 450 i oni će nazvati Odjel za potrošačka pitanja i poštenu trgovinu.

Arabic

عربي
الاستئجار في تاسمانيا
إذا كان لديك صعوبة فهم اللغة
الانجليزية، الرجاء الاتصال
بخدمة الترجمة الكتابية
والشفوية على الرقم ١٣١ ٤٥٠
وسيقومون بالاتصال لك هاتفيا
مع مكتب شئون المستهلكين
والتجارة العادلة.

Hmong

Kev ntiav-tsev nyob Tasmania

Yog koj tsis paub lus Askiv zoo, thov ntaus xovtooj rau Qhov -chaw Txhais-lus hauv Xovtooj uas yog 131 450 ces lawv mamli txuas xovtooj rau koj tham nrog lub tsev ua haujlwm Office of Consumer Affairs and Fair Trading.



renting in tasmania

Renting in Tasmania

This booklet is a guide to the rights and responsibilities of:

- owners and managers of residential rental property;
- owners and managers of boarding premises;
- public housing managers;
- tenants;
- tenant advocates; and
- persons involved in the provision of social housing.

Printing of this booklet has been partly funded by the Auctioneers' and Real Estate Agents' Guarantee Fund.

Copies of this booklet

If you wish to order additional copies of this booklet please telephone Consumer Affairs and Fair Trading on 1300 65 44 99 or write to GPO Box 1244, Hobart, 7001.

Comments

Comment on this booklet is welcome and should be sent to the Director of Consumer Affairs and Fair Trading at the address above.

DISCLAIMER

This document is prepared as a layman's guide to the law relating to residential tenancies in Tasmania as at 5th March 2004. No responsibility is accepted for any errors or omissions which it may contain. For precision, reference should be made to the *Residential Tenancy Act 1997*.

Role Of Consumer Affairs And Fair Trading

Consumer Affairs and Fair Trading administers the Residential Tenancy Act. This Act details the rights and responsibilities of tenants and property owners.

If you have a dispute with a tenant, an owner or their agent, the Office can tell you what you should do.

If a tenant has a dispute about a security deposit they can apply to the Residential Tenancy Commissioner to resolve the dispute. The Office can tell the owner how to respond.

If a boarding premises tenant has a general dispute they can also apply to the Residential Tenancy Commissioner to resolve the dispute. See page 23.

In some cases you may want to make an application to the Magistrates Court. You should talk to Consumer Affairs and Fair Trading or obtain legal advice before doing this. If you need to go to court the Office will tell you how to make an application to the court.

The role of the Office also includes:

- Providing information to tenants and owners about the effect of the law;
- Conducting education campaigns and producing educational resources;
- Dealing with complaints about possible breaches of the Act;
- Reviewing and amending the legislation to ensure that it remains relevant; and
- Monitoring the market place to detect unfair practices.

Residential Tenancies Internet Site

www.consumer.tas.gov.au
(click on Tenancy and Real Estate)

Contents

Introduction	4
Beginning The Tenancy	5
Length Of Tenancy	6
Entry Costs	7
Condition Reports and Deposits	8
Rent	9
Water Charges	10
Disputes	10
Privacy And Access	11
Maintenance and Repairs	13
Ending the Tenancy - Tenants	15
Ending the Tenancy - Owners	16
Ending the Tenancy - Either Party	18
Early Vacation	18
Abandonment	19
Mitigation of Loss	19
Re-Letting Costs	19
Abandoned Goods	20
Miscellaneous	20
Special Rules for Boarding Premises	22

Introduction

Purpose of this booklet

The Residential Tenancy Act sets out the rules which apply to residential tenancies in Tasmania. These rules became law on 1 July 1998. More recent changes relating to general tenancy law came into effect on 5th March 2004. Changes relating to boarding premises took effect on 25 August 2004.*

This booklet is a guide for persons involved in residential tenancy in Tasmania including tenants of boarding premises and owners of boarding premises, and their agents. It details general information about the rights and responsibilities of parties to agreements under the law. For more detailed information you should consult the Residential Tenancy Act, or seek further advice. A list of contacts is provided on the back of this booklet.

Use of the term Owner

Throughout this booklet the word 'owner' is used instead of 'landlord'. Owner refers to the person who owns a property or their agent/property manager, whichever is applicable.

Application of the Act

The Act applies to all residential tenancy agreements in Tasmania. A residential tenancy agreement exists where a right to live in a property is given to the tenant by the owner in exchange for rent.

The Act also applies to agreements to rent boarding premises entered into after 25 August 2004. It also includes agreements to rent boarding premises for a fixed term entered into before 25 August 2004. The Act will apply to these agreements from 25 August 2005.

In a boarding premises, a room is rented to a tenant, but bathroom, toilet and kitchen facilities, are shared with other tenants. Typically services such as meals and linen are also provided. 'Boarding premises' may include rooms in hotels, pubs, and back packers, but do not include college accommodation for tertiary and tafe students. The Act only applies to premises that are the tenant's principal place of residence. For example, if someone rented a room in a backpackers as holiday accommodation the Act wouldn't apply. If somebody rented a room as their main address the Act would apply.

* Changes relating to Section 6, commenced on 1 February 2004.

The general provisions of the Act apply to boarding premises, however there are some differences. These are summarised on page 25. There are also special rules for boarding premises. These are outlined on page 22 of this booklet.

The Act also applies to rental dwellings owned by the Government such as those rented from Housing Tasmania, Department of Health and Human Services.

The Act applies equally to verbal and written agreements.

If you are unsure whether the Act applies to your agreement you should contact Consumer Affairs and Fair Trading for advice.

Exemptions

Following is a list of exemptions under section 6 of the Act. You should also check any regulations made under that section.

The Act does not apply to:

- Any part of hotels or motels that are not boarding premises;
- premises ordinarily used for holiday purposes;
- educational institutions;
- hospitals, nursing homes, or clubs;
- homes within the meaning of the Aged Care Act 1997 (Commonwealth);
- premises where the lease has been registered under the Land Titles Act 1980; or
- any premises exempted by regulation.

Beginning The Tenancy

Tenancy Agreements

When a property is rented there will be an agreement which sets out the terms and conditions of that rental. A tenancy agreement between a property owner and a tenant may be in writing or it may be a verbal agreement.

Where the agreement is in writing, it should be easily legible, clearly expressed and where printed, in 10 point or more. [This text is 10 point]. The owner is to give the tenant a copy of the agreement within 14 days of the beginning of the tenancy.

If the agreement is to rent strata title premises the tenant must be given a copy of any strata title rules that apply to the property. These rules only apply to the tenant if the residential tenancy agreement says so.

If an agreement is verbal or partly verbal, the owner is to give the tenant a copy of this booklet. Copies of this booklet can be obtained from Consumer Affairs and Fair Trading.

Provisions of Act apply to all agreements

Whether stated or not in the agreement, the provisions of the Residential Tenancy Act form part of the agreement. Any provision in an agreement that is inconsistent with the Act has no effect in law and cannot be enforced by the owner.

If there is a dispute about whether any part of the agreement complies with the Act, any party can apply to a magistrate, who will determine whether that part of the agreement complies with the law.

Additional obligations

An agreement may contain additional obligations that do not conflict with the Act. For example, an agreement may require rent to be paid into a certain account or require other special obligations. These additional requirements can only be enforced if they are agreed between both owner and tenant.

Length Of Tenancy

Fixed term agreements

The residential tenancy agreement is for a fixed period if an expiry date is specified in the agreement. An agreement will be for a fixed term if the period is longer than 4 weeks.

If an agreement is for a fixed period, the tenant cannot be required to leave before the expiry date unless they have broken a condition of the agreement. However, if a tenant does leave before the expiry date the owner may recover costs for things such as advertising for a new tenant, and loss of rent.

Renewal of fixed term agreements

When a fixed term agreement expires, a number of things may occur:

- The tenant may leave;
- The owner may serve a notice to vacate requiring the tenant to leave;
- The tenant and owner may agree, within 28 days, to extend the agreement for a new fixed period (to be in writing);
- If neither a notice to vacate has been served nor a new fixed period agreed, the tenancy agreement converts to an agreement of no fixed period, after 28 days.

Agreements with no fixed term

An agreement of no fixed period does not have an expiry date. If an agreement has no fixed period the tenant may be required to leave only where:

- the tenant has broken a condition of the agreement;
- the property is to be sold;
- the property is to be renovated;
- the property is to be used for another purpose;
- the tenant and the owner have agreed to end the tenancy; or
- a magistrate orders that the agreement be terminated.

Entry Costs

Up-front fees and charges

The law prohibits an owner or agent from charging upfront fees, such as a fee to find a property for a tenant or application fees.

Limits to up front costs

The only up-front costs which a tenant may be required to pay when entering into a tenancy are:

- a security deposit;
- rent in advance for the first payment period; and
- a holding fee.

It is an offence for an owner to require more than:

- rent in advance for the relevant payment period;
- a holding fee; or
- a security deposit which is more than the equivalent of 4 weeks rent.

Holding fee

An owner may agree to hold a vacant property until a tenant is ready to move in. This is called a holding agreement. A holding agreement must be for a period of greater than 7 days. The tenant may be required to pay a fee for this agreement. This is called a holding fee and is a payment in addition to a security deposit or rent.

Condition Reports & Deposits

Security deposits

An owner may require a prospective tenant to pay a security deposit. The security deposit is a sum of money which the owner holds until the end of the tenancy to cover damage or losses caused by the tenant, or unpaid rent. The owner must supply a receipt for the security deposit which contains the following information:

- the name of the tenant;
- the amount of the security deposit;
- the address of the premises;
- the date of the receipt; and
- the name and address of the owner.

The amount of the security deposit must not exceed the equivalent of four weeks rent.

Condition reports

If an owner requires a prospective tenant to pay a security deposit, the owner must provide the tenant with 2 copies of a condition report on or before the beginning of the tenancy.

The condition report must state the general state of repair of the property and must be signed by the owner.

On receipt of the condition report, the tenant must sign it and return it to the owner within two days.

Condition report is evidence

A condition report is evidence of the state of repair and condition of the property at the beginning of the tenancy.

Even if a security deposit has not been charged it is a good idea for both parties to complete a condition report. This will help avoid disputes or resolve any that arise.

Owner may retain some or all of the security deposit

When the tenancy ends, the owner is to return the security deposit to the tenant within three working days of the end of the agreement but may deduct any amount which the tenant owes, e.g. unpaid rent, repair or cleaning costs. This may be disputed, refer to page 10.

If it is not possible to assess loss within three working days the owner must give the tenant a notice stating the reasons why the security deposit has been retained, a statement of any loss incurred by the owner, and an estimate of the date on which any further loss will be assessed. The owner must also provide the tenant with a statement informing the tenant that they may apply to the Residential Tenancy Commissioner for resolution of the matter if dissatisfied with the decision, and provide the address of the Commissioner.

Rent

Payment of rent

The rental agreement will specify a 'payment period', which is the time between each date that rent falls due. Once agreed at the beginning of the tenancy, the payment period cannot be changed unless both the owner and the tenant agree.

Rent is payable in advance for each payment period. This means that if the payment period is 2 weeks, the tenant pays 2 weeks in advance for the first 2 weeks and another 2 weeks rent in advance when the payment period has expired.

If the tenant pays for rent in cash or by cheque the owner must give the tenant a receipt which contains the following information:

- the date rent was received;
- what period rent was received for;
- the name of the tenant;
- the address of the premises for which rent was paid; and
- the amount of rent paid.

Increases in rent

During the tenancy, rent can be changed only if the written agreement allows for an increase, or if there is no written agreement.

To increase the rent the owner must give notice to the tenant specifying:

- the amount of the increase; and
- the day on which the increase takes effect.

An increase can only take effect from a day that is more than;

- 60 days after notice of an increase is given;
- six months after the last increase in rent;
- six months after notice of an increase is given, where the residential tenancy agreement commenced less than 60 days previously; or
- six months after an order from a magistrate relating to rent.

If the tenant believes a rent increase is unreasonable he or she may make an application to a magistrate to have the increase reviewed. If the magistrate considers it unreasonable compared to similar properties in similar locations, he or she may make an order to change the increase.

Water Charges

A property owner may only pass on a charge for water consumption where:

- a council makes a separate charge for water consumption; and
- the premises is equipped with a device that calculates the amount of water used at the premises; and
- the residential tenancy agreement allows the owner to pass the watercharge onto the tenant.

The owner and the tenant should note the water meter reading at the start and at the end of the tenancy. This should be recorded on the condition report.

Disputes

Security deposit disputes

Disputes about security deposits are dealt with by the Residential Tenancy Commissioner. If the tenant disagrees with the amount of the security deposit that is returned by the owner, the tenant may lodge a written application with the Commissioner and request the Commissioner make a decision about the matter.

An application to the Commissioner can be lodged with Consumer Affairs and Fair Trading, and must be accompanied by:

- a fee of \$15.00; and
- any information which supports the tenant's view about the security deposit.

Application forms are available from Service Tasmania outlets, can be downloaded from the Office web site www.consumer.tas.gov.au, or if you call 1300 65 44 99 one will be posted to you.

Commissioner will notify owner of dispute

On receipt of an application from a tenant the Commissioner will write to the owner requiring that:

- the owner must send any of the security deposit which has not been paid to the tenant; and
- a copy of the condition report.

If the owner wishes to send information which supports their view about the security deposit they must also pay a fee of \$15.00.

If the owner fails to lodge either the amount in dispute or a copy of the condition report with the Commissioner within 7 days, the owner may be prosecuted for an offence under the Act.

Decision of the Commissioner

When 7 days have elapsed from the time the owner is notified of a dispute, the Commissioner will decide how the security deposit should be distributed and notify the owner and tenant. Any party may appeal to the Magistrates Court against the Commissioner's decision within 7 days of the decision being made.

Privacy and Access

Right to quiet enjoyment

An owner must not interfere with the reasonable peace, comfort and privacy of the tenant. If the owner does not abide by this requirement they may be prosecuted under the Act.

Entry without permission

The owner may agree with the tenant on times when the owner may enter the premises. However, the owner may enter the premises at any time without permission of the tenant if it is reasonably believed that:

- the tenant is injured or ill and so is unable to give permission;

- a denial of immediate access is likely to result in damage to the premises;
- there is a risk to the tenant or another person on the premises;
- damage has occurred to the premises; or
- the property has been abandoned.

An owner may enter the premises without permission between 8 am and 6 pm by giving at least 24 hours notice for the following reasons:

- to meet commitments under the agreement;
- it is reasonably suspected that the tenant has not complied with the agreement;
- to ensure that repairs have been properly carried out; or
- to carry out routine inspections.

A routine inspection may be carried out in the first month of the tenancy and then once every three months afterwards.

Showing the property

If the property is to be sold or re-let the property owner should attempt to negotiate with the tenant to arrange suitable times to show the property to prospective purchasers or prospective tenants.

A property owner cannot hold an 'open home' for either sale or re-letting of the property without written permission from the tenant.

Showing the property to potential tenants

If a mutually acceptable time cannot be agreed, an owner may enter to show the property to a potential new tenant and any persons accompanying them if:

- notice to vacate or notice to terminate has already been given to the current tenant; or
- a fixed term agreement has less than 28 days to go before expiring.

In this case the owner may enter the property:

- only once per day;
- on no more than five days in any week;
- only between the hours of 8 am and 6 pm; and
- only where 48 hours notice in writing has been given.

Showing the property to potential purchasers

If a mutually acceptable time cannot be agreed, an owner may enter to show the property to a potential purchaser and any persons accompanying them:

- only once per day;
- on no more than five days in any week;
- only between the hours of 8 am and 6 pm; and
- only where 48 hours notice in writing has been given.

Maintenance And Repairs

Owner's obligation to maintain the premises

The owner is responsible for maintaining the premises in as near as possible the same condition (apart from reasonable wear and tear) which existed when the tenancy started. This means that the tenant agrees to accept the general condition of the property and cannot later require things to be fixed which were not agreed to when the tenancy began.

Tenant's obligations

The tenant is responsible for keeping the premises in a reasonable state of cleanliness and when leaving the tenancy, ensuring that the premises are in a similar condition to that which existed when the tenancy started.

The obligations of the owner or tenant do not extend to fair wear and tear of the premises.

Tenant to notify owner

If repairs are needed, the tenant is required to notify the owner within 7 days. As long as the need for repair was not due to the fault of the tenant, the owner must make the repair within 28 days. If the repair is needed because of some fault on the part of the tenant, the tenant should still notify the owner but must pay any cost involved. The Act does not require that the tenant notify the owner in writing, however it is a good idea to provide a written notice and to keep a copy.

Urgent and emergency repairs

Urgent repairs are required when an essential service has ceased to function. Where installed as part of the premises an essential service means:

- water;
- sewerage;
- removal of waste water from kitchens, bathrooms and laundries;
- electricity;
- heating;
- a cooking stove; or
- a hot water service.

For example, if one hot plate ceased to work, the stove would continue to function. This would not be an emergency. However, if a number of plates were not working or the stove did not work at all, this would be an urgent repair.

Tenant's obligations

Where an 'essential service' ceases to function, the tenant has an obligation to notify the owner of the need for urgent repair as soon as they are aware of the problem.

Owner's obligations

The owner has an obligation to carry out the repair or restore the service as soon as practicable.

Fuses, light globes and tap washers

The owner is not required to repair or replace electrical fuses, light globes, light tubes or tap washers. However the owner may prefer to arrange for these to be repaired if not confident that the tenant can carry out the repair adequately.

Nominated repairer

If an owner expects to be away or not able to be contacted, they can give the tenant the name of a person to contact if an urgent repair is needed. This person is called a 'nominated repairer' under the Act and they will undertake repairs to essential services on the owner's behalf. Many owners will include the name of a nominated repairer in the tenancy agreement.

If the owner cannot be contacted, or fails to carry out the repair, the tenant may make arrangements for the nominated repairer to carry out the repairs necessary to make the essential service function. The nominated repairer will charge the owner for their services.

If there is no nominated repairer or the nominated repairer cannot be contacted, the tenant may arrange for a suitable person to carry out the repairs. If the repairs are done by a suitable repairer the costs are paid by the tenant, and then recovered from the owner.

The Act makes provisions for the owner to repay any costs to the tenant within 14 days but the owner may dispute these costs and apply to the Magistrates Court for a decision to be made.

Emergency repairs

Emergency repairs are required when damage occurs to premises, for example during a storm. If this happens the tenant should immediately notify the owner.

If the owner cannot be contacted or fails to carry out the repairs, and immediate action needs to be taken to prevent damage or deterioration of the premises, the tenant may notify the 'nominated repairer' to make repairs so that no further damage would occur.

If the owner has not left a contact for a 'nominated repairer', the tenant may make arrangements with a suitable repairer at their own expense. As with urgent repairs, these costs can be recovered from the owner.

Tenant may apply for order

Failure to complete repair within the required time is a breach of the agreement on the owner's part. Where the owner fails to carry out repairs, or there is a dispute about whether repairs should be carried out, the tenant may apply to a magistrate for an order. The order may require the owner to carry out repairs. If the tenant has a fixed term agreement they may choose to leave the tenancy by giving a notice to terminate the agreement.

Ending The Tenancy - Tenants

Agreement of no fixed term

If the agreement does not have an end date it is an agreement of no fixed term. The tenant may provide a 'notice to terminate' giving the owner at least 14 clear days notice that they wish to end the agreement.

Fixed term agreements

If the agreement is for a fixed term, there will be a specific expiry date after which the tenant may leave. The tenant is not required to give notice of termination if a fixed period has expired. A tenancy agreement can end before the expiry date if the owner and tenant agree. If the owner does not agree and the tenant vacates early, the departing tenant will be liable for rent until a new tenant is found or until the end of the lease, whichever is earlier. The owner must find a replacement tenant as soon practicable. The outgoing tenant must also pay reasonable expenses such as advertising incurred by the owner in re-letting the premises.

Notice to terminate

If the owner has failed to comply with a provision of the agreement (e.g. carrying out normal maintenance within the required time), the tenant may give notice to terminate the agreement. The tenant must give at least 14 days notice. This means that the tenant can then leave if the agreement has not expired.

(Advice should be sought from the Magistrates Court about how notice may be served.)

Form of notice to terminate

A notice to terminate is to contain the following information:

- the date of serving the notice;
- the name of the tenant;
- the name of the owner;
- the premises for which notice is being given;
- details of the grounds or reasons for the notice; and
- the date on which the notice takes effect.

If a tenant leaves without giving notice they may be liable for further rent or other costs including re-letting costs after they have moved out.

Ending The Tenancy - Owners

Notice to vacate

A notice to vacate can be given for a breach of any residential tenancy agreement. For a fixed term agreement, a notice may be given at any time from 28 days before the expiry of the agreement. If the agreement has already expired, a notice to vacate may be given within 28 days after the date of expiry. If the agreement is an 'agreement of no fixed term' 28 days notice may be given if the property is to be sold, renovated, or used for a purpose other than rental.

If an owner wishes to end a tenancy, the owner must serve a notice to vacate on the tenant requesting the tenant to deliver vacant possession of the property. If vacant possession is not delivered, the owner must apply for an order of vacant possession from the Magistrates Court. If this is not done within 28 days after the notice to vacate took effect, the notice lapses. This means that the owner must serve another notice to vacate if they want to pursue the matter.

It is an offence for an owner to regain possession of a property unless vacant possession is:

- delivered by the tenant;
- delivered by an order of the court; or
- the property has been abandoned.

Notice to vacate

A notice to vacate may be served for the following reasons:

- the tenant has failed to comply with any provision of the agreement;
- the tenant has caused a substantial nuisance; or
- less than 28 days has elapsed since the agreement expired.

A notice to vacate for these reasons takes effect after 14 days.

An owner may also serve a notice to vacate if:

- the fixed period agreement is due to expire within 28 days after service of the notice;
- the agreement is for no fixed period and the property is to be sold, renovated or used for a purpose other than rental accommodation; or
- the property is to be sold by a lending institution to recover monies owed to the institution by the owner.

A notice to vacate for these reasons takes effect after 28 days.

(Advice should be sought from the Magistrates Court about how notice may be served.)

A notice to vacate is not needed where the premises has been abandoned or where a magistrate has issued an order of termination.

Notice periods

A notice to vacate takes effect 14 or 28 'clear days' after it is served. You must count the day of service as day '0' and the date of effect as day '16' or '30' respectively.

If you miscalculate the days and enter the wrong date in your notice to vacate this may void the notice, or delay the date on which it takes effect.

If you are uncertain you should seek advice from the Magistrates Court.

Arrears in rent

If notice is given because of non-payment of rent, the notice is of no effect if the tenant pays all arrears in rent before the date the notice takes effect.

This provision operates for the first two times in any 12 month period. On the third occasion in any 12 month period, the notice has effect even if all rent in arrears has been paid.

Form of notice to vacate

If notice is given because the tenant has failed to comply with a term of the agreement, and the tenant complies with the agreement before 14 days has expired, the notice has no effect.

A notice to vacate is to contain the following information:

- the date of serving the notice;
- the name of the tenant;

- the name of the owner;
- details of the premises;
- the reason for giving the notice; and
- the date on which the notice takes effect.

Application for order to vacate

If the tenant has not moved out when the notice to vacate takes effect, the owner may apply to the Magistrates Court for an order to vacate.

Copy of application to tenant

If an application is made to the court for an order to vacate, the owner must serve a copy of the application on the tenant as soon as possible. (Advice should be sought from the court on how the application may be served.)

When considering the application, the court will consider the following matters:

- whether the notice to vacate was properly given;
- whether the reasons for serving the notice were genuine or just; and
- whether the tenant was served with a copy of the application a reasonable time before the application is heard by a magistrate.

Ending The Tenancy - Either Party

Serious damage or injury

A party may apply to the Magistrates Court for an order of termination if the other party:

- causes or is likely to cause serious damage to the premises or contents;
- causes or is likely to cause physical injury to the other party;
- causes or is likely to cause serious damage to any neighboring premises;
- causes or is likely to cause physical injury to a person occupying neighbouring premises.

An order of termination will end the agreement and can deliver vacant possession to the owner on the day that the order is made.

Early Vacation

A tenant who has a fixed term agreement should continue to rent until the agreement expires. Sometimes however, changes to life circumstances such as work transfers, marriage, divorce, pregnancy or departure of a joint tenant, mean that alternative accommodation must be found prior to the expiry of the existing agreement.

In this situation the tenant should give as much notice as possible to the owner of their intended date of departure. The tenant may also assist the owner to find a replacement tenant, for example, by advertising. See re-letting costs below.

Abandonment

Owner may apply for order

A property is abandoned if:

- the tenant has left the property without notice;
- notice of termination has not been given by the tenant; and
- notice to vacate has not been served by the owner.

The owner may apply to the Magistrates Court for an order declaring that the property has been abandoned. If the court gives an order of abandonment, vacant possession is delivered to the owner from the date of the order. See re-letting costs below.

Mitigation Of Loss

If a tenant vacates early, or abandons the property, the tenant will be liable to the owner for any loss arising from their early departure. This will include rent until a suitable replacement tenant can be found, or until the expiry date of the agreement, whichever occurs sooner. It will usually also include some costs incurred in re-letting the property such as advertising.

The owner is to take reasonable steps to limit loss arising from early vacation or abandonment. This will mean trying to re-let the property as soon as possible.

Re-letting Costs

If a tenant leaves before the expiry of a fixed term agreement, an owner may charge re-letting costs. Re-letting costs may include assessing applications from prospective tenants, showing the property to prospective tenants, and advertising. The amount charged should reflect the actual cost incurred.

The cost incurred by an owner or agent may be claimed from the tenant in proportion to the amount of time before the agreement would have expired. This is because the owner or agent would have had to undertake the same activities at that time anyway.

Example: The agreement is for a fixed term of 12 months. The tenant leaves after 9 months. The owner or agent incurs costs of \$120.00 to re-let the property. The owner or agent may charge the tenant one quarter of this cost being \$30.00.

Abandoned Goods

Disposal of goods

If goods are left on premises and apparently abandoned after the agreement has been terminated, the owner may dispose of the goods if they appear to have no value.

If the owner suspects that the goods belong to a third party, for example because they have been bought on hire purchase, lent, or stolen, the owner should try to contact the third party or seek advice from the police.

If the owner disposes of goods they must sign a Statutory Declaration stating the means of the disposal.

If the value of goods appears to be less than \$300, the owner may sell the goods. The owner must sign a Statutory Declaration detailing the method of disposal.

If the value of the goods appears to be more than \$300, the owner may apply to the Magistrates Court for an order to sell the goods. The goods must be sold for the best price reasonably obtainable.

Proceeds of sale

The proceeds from any goods, which are sold, can be used to pay any debts owed by the tenant to the owner and the costs of selling the goods. Any balance must be kept in an interest bearing account for a period of 6 months.

If the tenant does not claim the proceeds within 6 months, the balance must be paid to the Residential Tenancy Commissioner.

Miscellaneous

Subletting

A tenant may not sublet premises without the consent of the owner, however, the owner cannot reasonably refuse permission or make any charge for giving permission.

If a premise has been sublet, the obligations under the agreement remain those of the original tenant who is liable for any acts by the sublessee.

Record of rent

The owner is required to keep a record of all rent received for a period of five years after the agreement has been terminated.

Agent of the tenant

A tenant may appoint an agent to act on their behalf. Details of the tenant's agent may be specified in the tenancy agreement or appointed at any other time. The tenant can revoke the appointment at any time.

If a tenant appoints an agent, any notices or documents required under the Act are to be given to the tenant's agent. Any notice given to an agent has the same effect as giving those documents to the tenant.

Cost of preparing agreements

The owner is responsible for any costs associated with preparing residential tenancy agreements. These costs cannot be passed onto the tenant.

Alterations, additions and fixtures

The tenant must not make any alterations, additions or add fixtures to a property without written consent of the owner. If the tenant has added a fixture to the property this may be removed unless the removal is likely to cause damage. If damage is caused, the tenant should notify the owner as soon as possible. The owner may allow the tenant to repair the damage or require compensation for reasonable costs of repairing damage.

Pets

A tenant is not to keep a pet on the premises without the permission of the owner, or unless permitted under the residential tenancy agreement. However tenants may keep a guide dog as defined under the *Guide Dogs and Hearing Dogs Act 1967*.

Special Rules For Boarding Premises

These provisions take effect from 25 August 2004.

Beginning a tenancy

If a boarding premises is rented the owner should provide a statement of key terms that set out the basic rights and responsibilities of the parties to the agreement. If there are house rules the tenant must be provided with a copy of the rules, or shown where in the premises the tenant can view the rules.

The tenant should also be given a 'Boarding Premises Kit'. These are available from Consumer Affairs and Fair Trading.

Statement of key terms

The statement of key terms sets out the basic rights and responsibilities of the parties to the agreement. For example, the amount of rent and how often it is to be paid, the address of the premises, the length of the tenancy and the names of the parties to the agreement.

The cost of services should be set out separately from the cost for rental. The agreement should be signed by both parties and dated. It should be easily legible, clearly expressed and where printed, in 10 point or more. [This text is 10 point].

The owner must keep a copy of the signed statement of key terms for at least 6 months after the agreement ends.

House rules

The house rules should state:

- any services provided, for example laundry and meals, and the times and frequency of those services;
- any facilities provided for the use of the tenant and any cost or restriction on the use of those facilities;
- any rules relating to access to bathroom and shower facilities;
- any restrictions on access by visitors;
- any restrictions on parking or storage of goods;
- any restrictions on the consumption of alcohol or smoking of cigarettes;
- a method of changing the house rules; and
- how the views of tenants are to be taken into account in formulating the house rules.

House rules should be displayed at the premises or should be available on demand to any tenant.

Locks

Each room must be fitted with a lock and be able to be secured. Neither the tenant nor the owner may add, alter or remove any lock or security device without the permission of the other party or an order from the Residential Tenancy Commissioner.

Where locks are added or altered, a copy of the key, opening device or information such as key pad number is to be provided to the other party.

Owner's right of entry

Restrictions apply to an owner's right to enter the tenant's room. An owner and tenant will normally agree on times to enter the tenant's room, for example to provide services or to carry out inspections. Times for inspections should be included in the statement of key terms. If agreement cannot be reached, restrictions on an owner's right of entry apply.

Meal Times

If meals are provided as part of the agreement, the meal must be provided within the following periods:

- For breakfast from 6 am to 9 am;
- For lunch from 12 midday to 2 pm; and
- For dinner from 5 pm to 8 pm.

Shared rooms

An owner must not allow more than one person to occupy a room unless they are joint tenants, or unless one of them is a carer for the other person.

Owner must be contactable

Tenants must be able to contact the owner or agent at any time by telephone or other means.

Role of the Residential Tenancy Commissioner

The Commissioner or their representative may investigate complaints by tenants or owners of boarding premises and will try to help the tenant and the owner come to an agreement.

If an agreement cannot be reached the Commissioner can make an order that either party comply with the Act, or with a term of the agreement.

Specifically the Commissioner can make the following orders:

- that the owner provide a copy of this booklet or other information to a tenant;
- that part of an agreement is inconsistent with the Act, and that it be modified or removed;
- that an increase in rent must not exceed a certain amount because the increase is unreasonable;
- that the owner carry out any reasonable repair that is not the fault of the tenant;
- that the owner secure the premises by providing a lock or other security device; or
- that a party to an agreement comply with the agreement or with a provision of the Act.

The Commissioner can also make an order confirming that a room has been abandoned by the tenant, and make an order permitting sale of abandoned goods if valued at \$300.00 or more.

If the owner fails to carry out repairs within 7 days, or there is a dispute about whether repairs should be carried out, a boarding premises tenant may apply to the Commissioner for an order that the owner to carry out repairs.

Enforcement of Orders

Orders of the Commissioner are enforced in the same manner as orders of a magistrate. Failure to comply with an order can result in fines or imprisonment.

Comparison of Normal Rules and Boarding Premises Rules

Issue	Normal Requirement	Boarding Premises Requirement
Security Deposit	Can be charged.	Cannot be charged.
Condition report	Compulsory if security deposit charged.	Not compulsory but advisable for both parties to complete a condition report.
Rent	A payment period for rent cannot be greater than 31 days.	Payment period for rent cannot be greater than 2 weeks.
Owner's general rights of entry	Restrictions apply to an owner's right of entry onto any part of the property.	Restrictions apply to an owner's right to enter the tenant's room. An owner and tenant will normally agree on times to enter the tenant's room, for example to provide services or to carry out inspections. Times for inspections should be included in the statement of key terms. If agreement cannot be reached, restrictions on an owner's right of entry apply.
Inspections	Routine inspections once in the first month then once every three months thereafter.	A routine inspection may be carried out every month in the case of boarding premises.
Repairs	General repairs must be completed within 28 days.	General repairs to boarding premises must be completed within 7 days.
Nominated repairer	Where the owner cannot be contacted to arrange repairs the tenant should contact a nominated repairer.	In the case of boarding premises, tenants should not deal with nominated repairers but should contact the owner or their representative directly. Boarding premises tenants are not entitled to arrange repairs themselves. If urgent or emergency repairs are needed, the owner cannot be contacted, and a nominated repairer is not available, tenants may contact the Office of Residential Tenancy Commissioner who will attempt to locate the owner.
Notice to terminate the agreement	If the agreement is an agreement of no fixed term the tenant may leave after giving 14 days notice.	If the agreement is an agreement of no fixed term the boarding premises tenant may leave after giving 2 days notice.
	If the agreement is for a fixed term and the owner breaches the agreement the tenant can terminate the agreement after giving 14 days notice.	If the agreement is for a fixed term and the owner breaches the agreement the tenant can terminate the agreement after giving 2 days notice. A notice to terminate is to state: - that the tenant intends to vacate the premises; and - the date on which the tenant intends to vacate.

Problems And Disputes

If you have a dispute or a problem, you should first discuss this with the other party. If you cannot solve the problem or you need further information or advice, you should speak to any of the organisations listed at the back of this booklet.

Enforcing rights in a court

Generally, your rights under the Residential Tenancy Act are enforceable through the Magistrates Court, however it may be useful to seek advice before taking this action. You should contact one of the organisations listed below.

Applying to the court

If you want to enforce a right in the court, you should go to the Magistrates Court, which will assist you in completing the appropriate form.

Where To Get More Information

Consumer Affairs and Fair Trading - Statewide	1300 654 499
Office of Residential Tenancy Commissioner - Statewide	1300 654 499
Magistrates Court	6233 3623
Real Estate Institute of Tasmania - Statewide	6223 4769
Tenants Union of Tasmania - Statewide	1300 652 641
Legal Aid Commission of Tasmania - Statewide	1300 366 611
Housing Tasmania	
Hobart Service Centre	6233 3736
Bridgewater Service Centre	6268 4200
Clarence Service Centre	6233 8431
Glenorchy Service Centre	6233 8904
Launceston Service Centre	6336 2370
Devonport Service Centre	6421 7832
Burnie Service Centre	6434 6353

www.consumer.tas.gov.au