



# The Rental Guide

A guide for property owners, property managers, tenants and tenant advocates in Tasmania

# The Rental Guide

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

- owners and managers of residential rental properties
- tenants of residential properties

This version of the Rental Guide incorporates the changes that came into force on 1 October 2014 through the *Residential Tenancy Amendment Act 2013* as well as the further changes that came into force on 1 August 2015 through the *Residential Tenancy Amendment Act 2015*.

If you have questions please phone **1300 654 499**, email [consumer.affairs@justice.tas.gov.au](mailto:consumer.affairs@justice.tas.gov.au) or visit [www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting)

Copies of this booklet are available at Service Tasmania shops.

Alternatively, you can download a free copy from [www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting)

## Disclaimer

This document is based on the *Residential Tenancy Act 1997*(The Act). It was prepared as a plain English guide to the law relating to residential tenancies in Tasmania. No responsibility is accepted for any errors or omissions it may contain. For precision, reference should be made to the Act. This guide is not intended to replace independent legal advice.

If you are deaf, hearing-impaired or speech-impaired, you can contact us through the National Relay Service:

- TTY users phone **133 677**, then ask for **03 6232 7133**
- Speak and Listen users phone **1300 555 727** then ask for **03 6232 7133**
- Internet relay users connect to the NRS [www.relayservice.com.au](http://www.relayservice.com.au) then ask for **03 6232 7133**



If you need an interpreter:



**13 14 50**

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# About the Tasmanian Residential Tenancy Act 1997

The *Residential Tenancy Act 1997* applies to most 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 applies equally to verbal and written agreements. However, some specific types of accommodation or agreements are exempted under the Act. These are noted below.

The Act applies to agreements to rent boarding premises and a range of additional provisions are included in the Act that are specific to this type of agreement.

The Act also applies to rental dwellings owned by the Government such as those provided by Housing Tasmania or a social housing provider.

If you are unsure whether the Act applies to your rental agreement you should contact Consumer Affairs and Fair Trading for further information:

[www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting) or phone **1300 654 499**.

The Act and Regulations can be found here: [www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au)

## Exemptions

The Act does not apply to emergency and short-term accommodation provided for people at risk of, or experiencing, homelessness or family violence, where the individuals stay for three months or less.

Some premises are exempt from the Act,

for example those listed below. For full details please refer to Section 6 of the Act, and 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 including Tasmanian University Colleges
- hospitals, nursing homes, or clubs
- homes within the meaning of the *Aged Care Act 1997* (Commonwealth)
- boarding premises in a building with less than 3 boarding premises where the owner also lives (for example, a room in the owner's residence where only 1 or 2 rooms are let).
- premises where the lease has been registered under the *Land Titles Act 1980*
- any premises exempted by regulation

## Beginning a tenancy

### Tenancy agreements

When a property is rented there is an agreement between the owner and the tenant. If the agreement is in writing, the owner must give the tenant a copy of the agreement within 14 days of beginning the tenancy. The agreement should be easily legible, clearly expressed, and printed in a font size of 10 points or more. This text is 10 point.

The owner should give the tenant a copy of this booklet. Copies are available from Service Tasmania shops or downloaded from

[www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting).

If the property has strata title rules that must be followed, the owner must give the tenant a copy of the rules at the time of entering into the agreement.

A lease is a contract between an owner and a tenant(s). It is preferable that a lease is written, stating all the terms of the agreement. Any changes to the agreement should be recorded in writing, such as rent, duration, etc.

A tenancy agreement cannot contain provisions which conflict with the Act.

### Fixed term agreements

If a residential tenancy agreement has an expiry date then it is called a fixed term agreement. Fixed term agreements must run for at least four weeks. The owner cannot ask the tenant to move out before the expiry date unless the tenant has broken a condition of the agreement. This is the case even if the property is sold; however, a tenancy can be terminated if the bank forecloses due to the owner defaulting on their mortgage.

For details of what happens at the end of a fixed term agreement see the section **Ending a fixed term tenancy agreement** on page 15.

### Agreements with no fixed term

If a tenancy agreement (written or verbal) does not have an expiry date then it is called an agreement of no fixed term. For details of what happens at the end of an agreement

**a tenancy agreement cannot contain provisions which conflict with provisions of the Residential Tenancy Act 1997**

with no fixed term see the section **Ending a tenancy agreement with no fixed term** on page 16.

### Up-front entry costs

The only up-front costs an owner or agent may charge a tenant when beginning a tenancy are:

- a rental bond (a security deposit up to the cost of four weeks rent) – see the section **Payment of rental bonds** on page 6
- rent in advance for the first payment period (usually two weeks rent if rent is paid fortnightly)
- a holding fee (if the owner agrees to hold a vacant property, for more than seven days, until the tenant can move in – this fee is usually not refundable).

The owner cannot charge any other fees, such as an application fee or a fee to find a property for a tenant.

### Minimum Standards for Rental Premises

As of 1 August 2015, a range of minimum standards will start applying to rental premises. These changes will be phased in so that owners have enough time to ensure they comply.

Under these standards each residential tenancy premises must:

- be weatherproof and structurally sound;
- be clean and in good repair;
- be adequately ventilated;
- be connected to a sewer, on site waste



management or other council approved toilet system;

- have hot and cold running water;
- be connected to an electricity system;
- contain a separate bathroom and/or toilet;
- include window coverings in any room that the owner knows is likely to be a bedroom or living area (this specific requirement does not apply to social housing)
- have cooking facilities which include an oven and at least two cooking elements for a premise with less than three bedrooms or three cooking elements for three or more bedrooms.

## Heating

The minimum standards will require that heating is installed in the main living area of the premise.

This heating may be:

- a fixed electric or gas heater ;
- a heat pump; or
- a wood heater.

For environmental and safety reasons, the minimum standards will not permit an open fireplace to count as adequate heating. Although it will continue to be possible to rent a property with an open fireplace, it will not be sufficient for this to be the only form of heating that is available unless an exemption is granted by the Residential Tenancy Commissioner.

## Ventilation

In summary, all rooms should be adequately ventilated by;

- windows or openings whose surface area is at least 5% of the size of the room. (for example, if the room is

10m<sup>2</sup> it should have a window or opening that is at least 0.5m<sup>2</sup>

If the room does not have windows or openings, it still fulfils the requirements if it opens into a room that has adequate windows or openings. (for example, if there was a storage room off a bedroom and the bedroom had adequate opening windows, the storage room would still be compliant)

Special provision is made for bathrooms or toilets (termed “sanitary compartments” in the legislation) and laundries. These rooms are still compliant without windows if they have an exhaust fan (or similar) that either vents outside or vents into a roofspace that has open eaves or roof vents.

Windows are likely to be the most common form of ventilation in a room. However, for a window to be the ventilation for the room, it must be able to be securely fastened in an open position (of at least 15cm wide) that enables ventilation while not enabling a person to enter.

For further details about these changes and their timeframes, phone **1300 654 499**.

Further information on the Minimum standards can also be found on the website.

## Exemptions to Minimum Standards

The Residential Tenancy Commissioner has the power under Section 36P to grant exemptions to the Minimum Standards for a premise or a class of premises. The Commissioner will consider applications made for an exemption on the specific circumstances of the case. Details on how an application can be made are available at [www.consumer.tas.gov.au](http://www.consumer.tas.gov.au).

As a guide, exemptions will be considered where the Commissioner considers that the premise or class of premises;



- technically does not meet the wording of the provisions but demonstrates that it meets the intent of the provisions (for example, a group of residential tenancies have been developed specifically for a group of students. They have a shared communal kitchen and dining area and therefore do not have all the cooking facilities within their tenancy), **or**
- the minimum standard should not apply due to an alternative design or technological solution (for example, where a house in a scenic isolated location has been built using double or triple glazing to remove the need for window coverings)

**and**

- The tenant would not be unfairly disadvantaged by an exemption

The Commissioner will publish de-identified case studies of exemptions as they arise to assist owners in deciding whether to apply for an exemption.

## Smoke alarms

Owners are required to install smoke alarms in all tenanted properties. These smoke alarms must comply with AS3786 or AS 1670.1, and must be functional and within their expiry date at the time of the beginning of the tenancy.

Smoke alarms may be either battery or mains powered until May 2016 however after that date, all smoke alarms must be

**If an owner wants a tenant to pay a security deposit (a bond), he or she must give the tenant two signed copies of a condition report on the property.**

either mains powered or powered by a 10-year non-removable lithium battery.

Tenants are required to ensure the smoke alarm is functioning for the duration of the tenancy. If the smoke alarm has a removable battery, it is the tenant's responsibility to replace this battery if it ceases to function.

If the smoke alarm is mains powered or has a non-removable battery, the tenant must advise the owner if the smoke alarm ceases to function. The owner must then repair or replace the alarm as soon as practicable.

*The Residential Tenancy (Smoke Alarms) Regulations 2012* outline the requirements for smoke alarms in residential tenancies. It includes provisions relating to the location of smoke alarms. These requirements align with the requirements for new or significantly renovated homes under the *Building Code of Australia*.

In summary, in houses, flats and units, smoke alarms are required in the area, hall or corridor outside a bedroom. At least one smoke alarm is also required in any storey that does not contain a bedroom.

In a boarding house, smoke alarms are required inside every bedroom as well as in the hallways or thoroughfares outside bedrooms.

Further information on smoke alarms can be found on the Tasmania Fire Service Website [www.fire.tas.gov.au](http://www.fire.tas.gov.au)

The Residential Tenancy Commissioner is able to issue an order requiring an owner comply with the requirements of the Act in relation to Smoke Alarms. An application for such an order can be made using the

Consumer Affairs [Complaint Form](#).

## Condition reports

A condition report describes the property's general state of repair before the tenant moves in. If the owner wants a tenant to pay a rental bond (security deposit), he or she **must** give the tenant two signed copies of a condition report at or before the beginning of the tenancy.

If the tenant finds damage that is not described in the condition report, he or she may add the details to both copies before signing the document. The tenant must then sign one copy and return it to the owner within two days of receiving the documents.

It is very important for both tenant and owner to keep a copy of the condition report in case there is a dispute at the end of the tenancy. If the tenant is responsible for any damage (apart from fair wear and tear) that wasn't there when they moved in, the owner may apply to withhold a portion of their bond to pay for repairs.

If an owner fails to provide a tenant with a copy of a condition report, any claim to damages at the end of the tenancy will be difficult to show. A tenant can devise their own condition report and provide it to the owner if they wish, as proof of damages or the state of the premises at the beginning of the tenancy.

A template condition report is available for use on the [www.consumer.tas.gov.au](http://www.consumer.tas.gov.au)

## Record keeping

**Both tenant and owner should make sure that all important requests and notifications are made in writing and are signed and dated**

It is a very good idea for both tenants and owners to keep a rental file. This should contain records of all rental agreements, leases, condition reports, letters, and requests for repairs, notices, receipts and invoices. The owner must also keep a rental ledger. Both tenant and owner should make sure that all important requests are made in writing and are signed and dated. These documents are very useful in case any misunderstandings or disputes arise.

## Payment of rental bonds

All security deposits, or "bonds", must be paid to the Rental Deposit Authority (RDA) or to a real estate agent. It is illegal for private property owners to receive a bond.

If the bond is paid to the agent, then the agent must forward it to the RDA. This rule applies to all residential tenancy agreements. The RDA holds the money until the end of the tenancy. The RDA does not pay interest on bonds held.

### Paying a bond (security deposit)

- The owner must give the tenant a partially completed Bond Lodgement Form with his or her signature, stating the amount of the bond. A copy of the form can be found at [Service Tasmania](http://Service Tasmania) or downloaded from [www.consumer.tas.gov.au](http://www.consumer.tas.gov.au)
- Everyone who contributes to the bond must sign the form and state how much they are contributing.
- If Housing Connect is contributing to the bond, there is a box to tick and space to include the unique PRSS number.





- The form can then be lodged at Service Tasmania along with payment of the bond. Tenants may choose to pay and lodge the form directly with the RDA by post or with the property's real estate agent if they prefer.
- Service Tasmania will issue the tenant with a receipt for the tenant and a receipt for the owner or agent. Many owners require one of the receipts prior to providing the keys. If the form and bond money is lodged with a property agent or directly with the RDA, then the RDA will post receipts directly to the tenant.
- The receipt will show your unique bond number that identified your bond in the RDA system. You will need this number when claiming your bond at the end of the tenancy.
- The receipt from Service Tasmania will not include a bond contribution from Housing Connect. If they have made a contribution, the RDA will send another receipt that includes their contribution.
- If you cannot access a Service Tasmania shop, Bond Lodgement Forms and payment can be posted directly to:

Rental Deposit Authority  
GPO Box 1244  
Hobart Tasmania 7001  
Australia

For posted lodgements, the RDA will accept bank cheques or money orders, but not personal cheques. You should never send cash in the post.

### **Please Note:**

Only people registered to the bond record (by way of Bond Lodgement or Transfer

Form) can claim back their bond. Tenants living in share houses might all choose to pay their bond to one person, with only that person's name written on the Bond Lodgement Form. In this case, only the named person can claim back the bond. If transferring tenants, a Tenant Transfer Form should be completed showing how much bond each tenant has contributed (see Transferring a Bond below).

### **If Housing Connect contributes to the bond**

If Colony 47 or Anglicare pay some of a bond, they will pay the RDA directly. A PRSS number is given to the tenant who includes this number in the Bond Lodgement Form.

### **Transferring a bond**

During the tenancy the property may be sold, management may transfer between the property owner and one or more property management firms, and tenants in share houses may come and go. New tenants, property owners or agents cannot claim any bond money unless the RDA has a record of their signature.

### **Change of ownership or management**

If management transfers to a different property owner or agent both the incoming and outgoing property owner or agent must

**Only people named on the bond record can claim back their bond**

fill in a Property Owner/ Agent Transfer Form and lodge it with the RDA either directly by post or through Service Tasmania.

## Change of tenants

- If more than one tenant is listed on a Bond Lodgement Form and one tenant leaves to be replaced by another, then the outgoing tenant, the incoming tenant, and the property owner or agent must complete a Tenant Transfer Form.
- The form must be lodged with the RDA by post or at a Service Tasmania shop.
- This transfers the portion of the bond to the new tenant's name. The outgoing and incoming tenants can decide between them how to exchange the bond money. An outgoing tenant should not sign the Tenant Transfer Form unless they have received their share of the bond money from the incoming tenant/s.
- There must always be one 'original' tenant - the RDA cannot transfer all of the tenants at once. That is considered a new agreement and the bond must be claimed by the outgoing tenants/ property owner/agent and a new bond paid by the incoming tenant(s).
- The RDA cannot transfer a bond if the outgoing tenant has received a bond contribution from Anglicare or Colony 47 (because the incoming tenant may not be eligible for assistance from those organisations). Instead they must claim the bond back from the RDA, then the

new tenant will need to lodge their own Bond Lodgement Form and pay the bond.

- The RDA cannot transfer bonds between properties.

## Claiming the bond

At the end of a tenancy agreement, anyone who has contributed to a bond is entitled to claim back their portion of the bond. The owner must supply the tenant with a signed Bond Claim Form within three days of the end of the tenancy. If this does not happen, the tenant can lodge their own Bond Claim Form.

The property owner or agent can claim some or all of the bond if the tenant has breached the residential tenancy agreement and that breach has caused the owner to incur a financial loss.

If an owner/agent is making a claim from the bond, they are to provide the tenant with a list of reasons for the claim.

The RDA cannot pay a claim unless the signatures shown on the Bond Claim Form match those on the original Bond Lodgement Form, or the Transfer Form.

Any bond contribution by Housing Connect is returned to them directly unless they agree to pay an amount to the owner.

If all the parties who signed the Bond Lodgement Form at the start of the tenancy (or a subsequent Bond Transfer Form) also sign the Bond Claim Form at the end of the tenancy, the RDA will pay out the bond as soon as possible.

### **You should never sign a blank form.**

Forms can be faxed directly to the RDA on **1300 737 487** or lodged at a Service Tasmania shop. The RDA will pay the bond to the parties in the proportions they agreed

**Tenants should never sign a blank bond lodgement form**

to on the Claim Form. If one or more of the signatures is missing the RDA will attempt to contact the other people who were listed on the Bond Lodgement Form to find out whether they agree with the claim.

### **Claim by the tenant(s)**

If the owner fails to provide a completed and signed Bond Claim Form or cannot be contacted, the tenant may submit a Bond Claim Form without the property owner's or agent's signature. Once received, the RDA will notify the agent/owner. If the owner or agent does not respond within 10 working days, the RDA will pay the bond to the tenant. It is important that the details on the claim form are correct and that you update your address with the RDA so that all correspondence is sent to your current address.

### **Claim by the owner**

If the tenant cannot be contacted or fails to lodge a Bond Claim Form the property owner may submit a Bond Claim Form that has only his or her signature on it. An owner cannot lodge a bond claim form without the tenant's signature unless they provide evidence of their reasonable efforts to locate the tenants (such as leaving a form with them at the end of the lease, or phoning/emailing them after the end of the tenancy). The RDA will attempt to contact the tenant to find out if they agree with the owner's claim. If they do not agree, or if they cannot be contacted within 10 days, the matter will be referred to the Residential Tenancy Commissioner (the Commissioner) as a 'dispute' and the Commissioner will assess the claim.

If the owner lodges a Bond Claim Form and the tenant or other contributors to the bond disagree with the claim, the tenant

can lodge a Bond Claim Form for a different amount. The matter will then be referred to the Commissioner as a 'dispute'.

### **Claim by other person or organisation who contributed to bond**

If another person or organisation listed on the Bond Lodgement Form makes a claim against a bond, and the tenant or owner's signatures are missing, the RDA will attempt to contact the other signatories. If the owner or agent does not respond within 10 working days, the RDA will pay the bond to the claimant.

### **Disputes about a bond claim**

Bond disputes are decided by the Residential Tenancy Commissioner (the Commissioner). Claims will be referred to the Commissioner in the following situations:

- Bond Claim Form signatures are missing or do not match with the signatures on the Bond Lodgement Form;
- Housing Connect has not agreed to the claim;
- The amounts claimed do not total the bond amount.

Once a dispute is referred to the Commissioner, the tenants and the agent/property owner are notified and are

**If a tenant is unsure why a claim is being made against the bond, they should first contact the owner or agent. The owner or agent is obliged to provide a list of reasons for the claim**



given 10 days in which to supply evidence to support or refute the claim. If you are unsure of why a claim is being made against your bond, you should contact the property owner or agent first, as they are to provide you with a list of reasons for the claim.

Evidence can be emailed, posted or faxed.

Once your dispute has been assessed, you will be sent a formal copy of the Commissioner's decision by post. If you do not agree with the Commissioner's decision you have 7 days in which you can appeal the matter to the Magistrates Court. If no appeal is lodged, the RDA will pay out the bond on the date specified in the determination. If an appeal is lodged, the RDA will pay out the bond only after a Magistrate has made an Order telling the RDA how to distribute the bond.

## During a tenancy

### Rent

#### Payment of rent

The tenancy agreement will specify a payment period, for example fortnightly. Rent for each payment period must be paid in advance. The payment period can only be changed if both tenant and owner agree. If the tenant pays rent using cash or cheque the owner must give the tenant a receipt that details:

- the date rent was received
- the period rent was received for
- the name of the tenant
- the address of the premises for which rent was paid, and

**From 1 October 2015, rent can only be increased 12 monthly regardless of the date of the signing of the agreement.**

- the amount received.
- An agent or owner must always provide at least one method of payment of rent that does not involve the payment of a fee or charge to the agent.

### Increases in rent

Rent can only be increased if there is a written tenancy agreement that allows for rent increases, or if the agreement is not in writing. The owner can only increase the rent after giving the tenant written notice, specifying:

- the amount of the new rent
  - the day on which the increase begins.
- If you signed your agreement after 1 October 2014, your rent can be increased
- 60 days after notice of the increase is given and either:
    - 12 months after the commencement/renewal/extension of the agreement; or
    - 12 months after the last increase in rent; or
    - 12 months after an order from a magistrate relating to rent.

If you signed your agreement prior to 1 October 2014, rent can only be increased:

- 60 days after notice of the increase is given and either:
  - 6 months after the commencement/renewal/extension of the agreement; or
  - 6 months after the last increase in rent; or
  - 6 months after an order from a magistrate relating to rent.

### From 1 October 2015.

From 1 October 2015, rent can only be

increased 12 monthly regardless of the date of signing of the agreement.

Tenants: If you think a rent increase is unreasonable, contact Consumer Affairs and Fair Trading, or one of the services listed under **Problems and legal disputes** on the back of this booklet for advice.

Unreasonable rent increases can be reviewed by the Residential Tenancy Commissioner, who may order the owner to change the increase if it is not comparable with other rents charged for similar rental properties. An application can be made to the Commissioner using the Consumer Affairs [Complaint Form](#)

## Privacy and access

### Right to quiet enjoyment

An owner must not interfere with the reasonable peace, comfort and privacy of the tenant. If a tenant feels that he or she is not being allowed this right, they should raise the issue with the owner or agent. If this does not resolve the issue they can contact any of the services noted under Problems and legal disputes, as listed on the back page of this booklet. Alternatively, you can lodge a complaint with Consumer Affairs and Fair Trading using our [complaint form](#)

### Entry by the owner without permission

The owner and tenant should agree on times when the owner may enter the premises. However, if the owner and the tenant cannot agree the owner may enter the premises at any time without the tenant's permission only 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
- the property has been abandoned.

An owner may enter the premises without permission between 8.00am and 6.00pm if they give at least 24 hours notice:

- to meet commitments under the tenancy agreement
- if it is reasonably suspected that the tenant has not complied with the tenancy agreement
- to ensure that repairs have been properly carried out
- to carry out routine inspections (these may be carried out every three months).

### Showing the property

If the property is going to be sold or re-let the owner must receive written permission from the tenant before holding an 'open home' for either sale or re-letting of the property.

The owner and tenant should agree on suitable times to show the property to individual prospective purchasers or prospective tenants. If a mutually acceptable time cannot be agreed the following provisions apply.



## Showing the property to potential new tenants

If the owner and tenant cannot agree on an acceptable time, an owner may enter to show the property to a potential new tenant and anyone accompanying them if:

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

In this case the owner may enter the property after giving 48 hours notice in writing and then:

- only once per day
- on no more than 5 days in any week
- only between the hours of 8.00am and 6.00pm.

## Showing the property to potential purchasers

If the owner and tenant cannot agree on an acceptable time, an owner may enter to show the property to a potential purchaser and anyone accompanying them after giving 48 hours notice in writing and then:

- only once per day
- on no more than 5 days in any week
- only between the hours of 8.00am and 6.00pm.

## Advertising photographs of tenanted properties

When advertising a tenanted property for sale or rent, owners have an obligation to seek the written permission of the tenant prior to publishing or displaying photos or any other image (ie online tours) of the

property that might identify the tenant or any other person.

## Maintenance and repairs

### Owner's obligation to maintain the premises

The owner must maintain the premises in as near as possible to the same condition (apart from reasonable wear and tear) as when the tenancy started. If maintenance or repairs are needed, and the tenant is not at fault, the owner must make the repairs at his/her own cost. If the repairs are general in nature the owner has 28 days from when the tenant notified them in which to make the repairs. If the repairs relate to a heating element of a cooking stove the repair should be completed in 14 days from notification.

### Tenant's obligations

The tenant is responsible for keeping and leaving the premises in a reasonable state of cleanliness, ensuring that the premises are in a similar condition to that which existed when the tenancy started (apart from reasonable wear and tear). If the tenant caused the need for repair they must pay any costs involved.

If repairs are needed, the tenant should notify the owner within 7 days. The Act doesn't require the tenant to make this notification in writing; however, it is recommended that the notification is made in writing and that the tenant keeps a copy.

Tenants are also required to ensure that all smoke alarms are regularly tested and kept clean so that they function effectively. Up until May 2016, if the smoke alarms are using removable batteries, it is the tenant's responsibility to replace the batteries if they stop working.



## General repairs

If the repairs are general in nature, the owner has 28 days from when the tenant notified them in which to make the repairs.

There is an exception - If the general repair relates to a cooking stove, it must be undertaken in 14 days.

If the repairs are urgent or emergency repairs they must be made as soon as possible.

## Urgent Repairs

An urgent repair is required where essential service is no longer functioning. If this happens:

- the tenant must notify the owner of the need for urgent repairs as soon as they are aware of the problem
- the owner has an obligation to carry out the repair or restore the service as soon as possible.

Essential services include:

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

The Act further defines what is “functioning” in regards to repairs in section 33. For example, a cooking stove is no longer functional if half the cooking elements are not working.

**If repairs are needed, the tenant should notify the owner within 7 days. It is recommended that this notification be in writing for future reference.**

## Emergency repairs

Emergency repairs are those required when damage occurs – a broken window from a storm, for example. A repair is an “emergency” where further damage or deterioration will occur if the repair isn't undertaken as soon as practicable.

In the case of an emergency or an urgent repair, a tenant has the ability to arrange the repair themselves if the owner is not contactable. A tenant can arrange for the nominated repairer (provided by the owner) to undertake the repair and invoice the owner.

If the owner has not nominated a repairer, the tenant can seek to have a suitably qualified person to undertake the repair. In this situation, the tenant is liable to pay this person and to seek reimbursement from the owner.

## Reasonable wear and tear

Reasonable wear and tear is not defined in the Act. However, in general terms, reasonable wear and tear includes minor marks and scratches. Stains on carpet and deep or numerous scratches to floor boards are generally not considered reasonable but would be assessed in the context of the type, age and condition of the flooring at the beginning of the tenancy.

## Locks and security devices

The owner must ensure that the property is fitted with locks and security devices necessary to secure the premises and that these are maintained during the tenancy. If the premises aren't adequately secured a tenant should discuss the matter with the

owner. If this does not resolve the matter, the tenant can talk to Consumer Affairs and Fair Trading or any of the services listed under Problems and legal disputes on the back of this booklet. A tenant can seek an order from a magistrate that adequate locks be installed.

As of 1 October 2014, a tenant may alter or remove any lock or security device without owner consent or the order of a court if a Family Violence Order or a Police Family Violence Order is in force for the protection of the tenant.

### **Alterations, additions and fixtures**

The tenant must not make any alterations or additions or add fixtures to a property without the written consent of the owner. If damage is caused through alterations, the tenant should notify the owner as soon as possible. The owner may allow the tenant to repair the damage or request compensation for reasonable costs of repairing the damage.

### **If the owner cannot be contacted**

If an owner expects to be away or not able to be contacted, he or she should 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 will undertake repairs to essential services on the owner's behalf. Many owners 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. 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.

### **Disputes about repairs**

The owner must complete repairs within the required time otherwise he or she is in breach of the tenancy agreement. Where the owner fails to carry out repairs, or there is a dispute about whether repairs should be carried out, the tenant can contact Consumer Affairs and Fair Trading or any of the services listed under **Problems and legal disputes** on the back of this booklet for information about his or her rights.

A tenant may apply to the Residential Tenancy Commissioner for an order requiring the owner to carry out repairs.

If the tenant has a fixed term agreement they may choose to leave the tenancy by giving notice to terminate the agreement for failure to carry out repairs. See the section **Notices to vacate/terminate a tenancy agreement** on page 18.

### **Water charges**

A property owner can only charge a tenant for water consumption where:

- a water authority makes a separate charge for water consumption
- the premises are equipped with a device that calculates the amount of water used at the premises

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.



# Ending a tenancy

## Ending a fixed term tenancy agreement

A fixed term tenancy agreement has a specific expiry date when a tenant is required to leave the rental premises. The tenant and the owner can agree in writing to extend or renew the agreement at any time prior to the expiry of the agreement.

If the owner does not wish to extend or renew the agreement they need to serve a notice to vacate on the tenant requiring the tenant to leave. Further information on **Notices to Vacate** can be found on page 18.

A tenant does not have an obligation to give notice that they do not wish to extend or renew the agreement. However, a tenant's refusal to negotiate such an extension or a renewal as the expiry date draws nearer may encourage an owner to issue a notice to vacate and seek an alternative tenant.

If a notice to vacate is not issued, the agreement is not terminated in any way nor extended, and the tenant continues to live at the premise and pay rent, the agreement automatically becomes an agreement of no fixed term. For ending an agreement of no fixed term, please see that section below.

## Termination by the Tenant

A tenant may terminate a tenancy for either of the following reasons:

- The owner has breached a provision of the residential tenancy agreement;
- The owner has failed to carry out repairs that are not the tenant's fault within 28 days of the tenant notifying them (see the Maintenance and Repairs section in this booklet for further

information about repairs and notices).

A notice to terminate must be in writing and must be served on the owner or agent, and must state the date on which the agreement will be terminated, being at least 14 clear days after the date of service. See the section **Notices to Terminate/Vacate** on page 20 of this booklet.

## “Breaking the Lease”

If a tenant wishes to leave a property before the end of the tenancy agreement (or “break the lease” as it is commonly referred to) they should give as much notice as possible to the owner of their intended date of departure.

In this situation the tenant is normally responsible for paying rent until a new tenant is found or until the expiry date of their agreement, whichever comes first. The owner must make reasonable attempts to find a new tenant, for example by advertising and by not unreasonably refusing applications. The tenant may help the owner to find a replacement tenant, for example by advertising for one.

The owner or agent may make a claim on the bond for any loss directly arising from the early vacation. An example would be rent due until a replacement tenant is found or the agreement ends.

Once a tenant has given notice, vacated the property and returned the keys, the tenant is responsible for rent until a new tenant moves in or until the fixed term agreement ends, but is no longer responsible for cleaning and gardening



issues. Rather, an owner/agent should undertake the final inspection as soon as the tenant moves out and returns the keys.

## If the owner wants the tenant to leave early

An owner may only demand that a tenant leave the property before the tenancy agreement's expiry date if:

- the tenant has breached the agreement or has caused substantial nuisance, or
- the property is due to be sold by a lending institution in order to recover money owed by the owner (in which case at least 60 days notice must be given).

However, there is nothing preventing an owner seeking a negotiated end to a tenancy. This may be achieved through offering assistance with covering moving costs or reducing rent until vacation.

For further advice contact Consumer Affairs and Fair Trading or any of the services listed under **Problems and legal disputes** on the back cover of this booklet. You can also visit the Magistrates Court website:

[www.magistratescourt.tas.gov.au/divisions/civil/residential\\_tenancy](http://www.magistratescourt.tas.gov.au/divisions/civil/residential_tenancy)

## Ending a tenancy agreement with no fixed term

A tenancy agreement that has no fixed term can be ended when:

- the tenant and owner agree to end the tenancy
- the tenant gives the owner at least 14 days notice that they wish to end the agreement and move out

- the owner gives the tenant at least 14 days notice because the tenant is in breach of the tenancy agreement
- the owner gives the tenant at least 14 days notice because the tenant has caused a substantial nuisance
- the owner gives the tenant at least 42 days notice that the property is to be sold, transferred to another person, significantly renovated, used as a residence by a member of the owner's family, or used for a purpose other than as a rental property.
- a magistrate orders that the agreement be terminated (see below under "court ordered end to a tenancy")
- the property is due to be sold by a lending institution in order to recover money owed by the owner (in which case at least 60 days notice must be given).

## Court-ordered end to a tenancy agreement

### Serious damage or injury

The owner or the tenant 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 an occupant of the premises
- causes or is likely to cause serious damage to a neighbouring premises
- causes or is likely to cause physical injury to a person from a neighbouring premises.

An order of termination will end the agreement.



## Family violence

If a court makes a Family Violence Order against a tenant, the court may also make an order ending their residential tenancy agreement, and making a new agreement on behalf of the person affected by the violence. The new agreement will continue on the same terms as the old agreement.

## Abandonment

A property is said to be abandoned if:

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

The property is not abandoned if rent is still being paid for the property. If the owner believes that the property has been abandoned they may take possession of the property. However, if the owner takes possession and the property has not been abandoned, for example the tenant is in rent arrears and on holiday but intending to return, the owner could be in breach of the Act.

If the owner is unsure, he or she may apply to the Magistrates Court for an order declaring that the property has been abandoned.

## Automatic Termination

An agreement will automatically come to an end if the tenant dies and there is no other surviving tenant in relation to the premises.

An agreement also comes to an end where a closure order is made under the *Public Health Act 1997*.

## Disposal or sale of abandoned goods

If a tenant leaves goods behind when he or she leaves the property, the owner may do one of the following things:

### If the goods are of no value

Donate or discard the items and sign a Statutory Declaration that describes the method of disposal.

### If the goods appear to be worth less than \$300

Sell the items and sign a Statutory Declaration stating the method of disposal.

### If the goods appear to be worth more than \$300

Apply to the Magistrates Court for an order to sell the goods.

### If the items appear to belong to someone else

For example if they've been bought on hire purchase, lent or stolen: contact the owner of the goods or seek advice from the police.

When the owner of the rental property sells goods that have been abandoned by the tenant, the money can be used to cover any debts owed by the tenant to the owner and the costs of selling the goods. The owner must put any money that is left over after

**An agreement automatically ends if the tenant dies and there is no other surviving tenant in relation to the premises. An agreement also comes to an end where a closure order is made under the *Public Health Act 1997*.**

these debts have been paid into an interest-bearing account for 6 months after the sale. If the tenant does not claim the proceeds within 6 months, the owner must pay the left-over money to the Residential Tenancy Commissioner.

## Costs of leaving early or abandoning a property

If a tenant has abandoned a tenancy or vacated it early, an owner can claim financial loss directly arising from the early vacation from the bond.

These charges must reflect actual expenses incurred by the owner and the RTC will require evidence of the costs when a claim is made on the bond.

Agents may charge the owner a set fee for reletting a property however they cannot charge the tenant this fee or claim it from the bond.

Re-letting costs cannot be charged if the tenant is evicted following a notice to vacate or an order from the Magistrates Court.

For more information about calculating costs of leaving a property early, see the Consumer Affairs and Fair Trading website [www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting).

## Notices to vacate or terminate a tenancy agreement

There are some situations in which a tenant or owner might wish to end a tenancy agreement prematurely. Owners typically will need a notice to vacate; tenants typically will need a notice to terminate (see below). You can serve a notice by giving it to the

person, by leaving it at their last known address or by using a process server to deliver it to their last known residential or postal address or to their business or place of employment. If you believe that a dispute is likely to result from serving this notice, it is recommended that a witness be present who can vouch for your having served it in one of the above ways. Further advice on how a notice may be served can be sought from the Magistrates Court. Visit their website at:

[www.magistratescourt.tas.gov.au](http://www.magistratescourt.tas.gov.au) Office of Consumer Affairs and Fair Trading | The Rental Guide

### Notice to vacate (for use by owners)

If an owner wishes to end a tenancy, he or she must serve a notice to vacate on the tenant, requesting the tenant to deliver vacant possession of the property. A notice to vacate is not needed where the premises have been abandoned or where a magistrate has issued an order of termination. A notice to vacate may only be given in the following circumstances:

- For a fixed term agreement, if the agreement is due to expire within the next 60 days. In this situation, at least 42 days notice must be given.
- The tenant has breached the agreement; however, if the notice is given because the tenant has failed to comply with a term of the agreement, and the tenant then complies before

**If a tenant has abandoned a tenancy or vacated it early, an owner can claim financial loss directly arising from the early vacation.**



14 days has passed, the notice has no effect. (See also Arrears in rent.)

- The tenant has caused a substantial nuisance.
- For an agreement of no fixed term, if the property is to be sold, renovated, rented to a family member or used for a purpose other than rental. 42 days notice is required for this provision. If the premises are to be sold, the notice must be served with proof of an agreement to sell the premises.
- Whatever the nature of the agreement, a notice to vacate can be given if the property is sold by a lending institution to recover money owed to the institution by the owner. This notice must provide 60 days notice

### Number of days in the notice period

The notice to vacate takes effect 14, 42 or 60 'clear days' after it is served. You must count the day of service as day '1' and the date of effect as day "16", '44' or '62' respectively. If you miscalculate the days and enter the wrong date in your notice to vacate this will delay the date on which it takes effect.

### Contents of the notice to vacate

The notice to vacate must contain:

- 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
- the date on which the notice takes effect.

### 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 14 days have passed.

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.

### If the tenant will not leave

If a notice to vacate is served and the tenant does not leave, the owner must apply for an order to vacate from the Magistrates Court. If this happens the owner must deliver a copy of the application to the tenant as soon as possible. If the application is not made within 28 days of the notice taking effect the notice lapses. This means that the owner must serve another notice to vacate if they want to pursue the matter.

When considering the application, the court will consider:

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

**It is an offence for an owner to regain possession of a property unless vacant possession is delivered by the tenant, an order has been issued by the court or the property has been abandoned.**

## Regaining possession of the property

It is an offence for an owner to regain possession of a property unless vacant possession is delivered by the tenant or by an order of the court, or unless the property has been abandoned.

## Notice to terminate (for use by tenants)

If the tenant wants to leave early because the owner hasn't complied with the agreement – for example, if the property is not maintained properly – they must give the owner a notice to terminate the agreement. A notice to terminate for an owner's failure to remedy a repair cannot be served unless the tenant has notified the owner of the need for repairs and allowed the owner 28 days to fix the issue.

A notice to terminate must 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
- the date on which the notice takes effect.

If the owner complies with the notice within 14 days, the notice has no effect and the agreement continues. However, if the notice is given for failure to carry out repairs, the notice still ends the agreement even if the repairs are carried out within 14 days.

The tenant is responsible for rent until the last day of the notice. 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. See the section “**Breaking the Lease**” on page 15.

## Problems and disputes

If you have any questions about your rights and responsibilities under the *Residential Tenancy Act 1997*, Consumer Affairs and Fair Trading is happy to provide information.

This information is not, however, legal advice.

If you have a problem you should first discuss it with the other party. If you cannot solve the problem and you need legal advice or assistance, contact the Legal Aid Commission, the Tenants' Union, a community legal service or a solicitor of your choice.

There are contact details for various services that may be able to help on the back of this booklet.

## Enforcing rights in a court

Generally, your rights under the *Residential Tenancy Act 1997* are enforceable through the Magistrates Court or the Residential Tenancy Commissioner; however, it may be wise to seek advice before taking this action.

## Definitions

A **tenant** is someone who rents a property from the property's **owner**. The owner may employ a property manager/agent to look after the property while it is being rented to the tenant. Throughout this booklet 'owner' can mean the actual owner OR the property manager/agent.

An advocate is a person or organisation who helps a tenant to rent a property.

## Share houses

A share house exists where two or more tenants rent a single property. There are two types of share house arrangement: sub-letting and co-tenant. For information about rental bonds as they relate to share houses, see the section **Payment of rental bonds** on page 6.

## Sub-letting

In this arrangement one tenant (called the head tenant) rents the property and then sub-lets to the other tenant(s). In this situation only the head tenant has a residential tenancy agreement with the property owner. The head tenant:

- must occupy the premises;
- is responsible to the owner for any damage; and
- is responsible for the rental bond and the rent for the property.

Where the head tenant is the employer of the sub-tenant, there is no requirement for the head tenant to occupy the premises. A tenant cannot sublet without the owner's permission. The owner cannot unreasonably withhold permission. *The Residential Tenancy Act 1997* does not apply to the agreement between the head tenant and sub-tenants.

## Co-tenant

In this arrangement two or more tenants rent the property with all names appearing on the residential tenancy agreement and condition report. Only one security deposit is payable for the property. Each tenant should note his or her contribution to the rental bond on the Bond Lodgement Form.

If a tenant leaves a share house they should contact the owner to ensure that their name is removed from any tenancy agreement. Similarly, a new tenant should contact the owner to ensure that their name is added to the tenancy agreement document. A Tenant Transfer Form must be completed and submitted to the RDA by post or lodged at a *Service Tasmania* shop. The new tenant will need to pay the correct portion of the bond to the former tenant.

## Boarding premises

Boarding houses are subject to special rules – for example, tenants do not have to pay a bond when they move in. The guidelines are explained in more detail on the website: [www.consumer.tas.gov.au/renting/boarding](http://www.consumer.tas.gov.au/renting/boarding).

Sometimes there is confusion about whether a premise is a boarding premises or a share house. Here is a simple way to tell them apart:

- In a share house two or more tenants agree with the property owner to rent the whole of the premises. The tenants decide between themselves who will have access to which bedroom and sometimes to other rooms such as an en suite. The tenants share common facilities such as the kitchen and bathroom.
- In a boarding house each tenant agrees with the property owner to rent a bedroom, and potentially other rooms such as an en suite and the other facilities are shared. These may be any of the kitchen, bathroom or toilet facilities.





# Where to get more information

Forms are available from all Service Tasmania shops, property agents, online access centres, community health centres and migrant resource centres. They are also available online at [www.consumer.tas.gov.au/forms](http://www.consumer.tas.gov.au/forms).

**Consumer Affairs and Fair Trading** ..... 1300 654 499  
[www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting)

**Rental Deposit Authority** ..... 1300 654 499  
[www.MyBond.tas.gov.au](http://www.MyBond.tas.gov.au)

**Office of the Residential Tenancy Commissioner** ..... 1300 654 499  
[www.consumer.tas.gov.au/renting/disputes](http://www.consumer.tas.gov.au/renting/disputes)

**Real Estate Institute of Tasmania** ..... 6223 4769  
[www.reit.com.au/faqrenting](http://www.reit.com.au/faqrenting)

## Enquiries about housing assistance or public housing

**Housing Tasmania** ..... 1800 060 901  
[www.dhhs.tas.gov.au/services/channels/abouthousing](http://www.dhhs.tas.gov.au/services/channels/abouthousing)

**Housing Connect** ..... 1800 800 588  
[www.dhhs.tas.gov.au/housing](http://www.dhhs.tas.gov.au/housing)

## Problems and disputes

**Tenants Union of Tasmania** ..... 1300 652 641  
[www.tutas.org.au](http://www.tutas.org.au)

**Legal Aid Commission of Tasmania** ..... 1300 366 611  
[www.legalaid.tas.gov.au](http://www.legalaid.tas.gov.au)

**Consumer Affairs and Fair Trading** ..... 1300 654 499  
[www.consumer.tas.gov.au/renting](http://www.consumer.tas.gov.au/renting)

**Hobart Community Legal Service** ..... 6223 2500  
[www.hobartlegal.org.au](http://www.hobartlegal.org.au)

**Women's Legal Service Tasmania** ..... 1800 682 468  
[www.womenslegaltas.org.au](http://www.womenslegaltas.org.au)

## Magistrates Court of Tasmania

[www.magistratescourt.tas.gov.au/divisions/civil/residential tenancy](http://www.magistratescourt.tas.gov.au/divisions/civil/residential_tenancy)

Hobart	6233 3623	Devonport	6421 7892
Launceston	6336 2605	Burnie	6434 6322