



The Rental Guide

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

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The Rental Guide

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The Rental Guide

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

- owners and managers of residential rental properties
- public housing managers
- tenants and their advocates
- people who provide social housing.

Copies of this booklet are available for sale at Service Tasmania shops and through most real estate agents. Alternatively, you can download a free copy from www.consumer.tas.gov.au/renting.

Disclaimer

This document is based on the *Residential Tenancy Act 1997*. It was prepared as a layperson's guide to the law relating to residential tenancies in Tasmania as at 1 July 2009. No responsibility is accepted for any errors or omissions it may contain. For precision, reference should be made to the Act.

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Contents

Introduction	1
Beginning a tenancy	1
Tenancy agreements	1
Fixed term agreements	1
Agreements with no fixed term	1
Up-front entry costs	1
Condition reports	2
Record keeping	2
During a tenancy	2
Rent	2
Payment of rent	2
Increases in rent	3
Privacy and access	3
Right to quiet enjoyment	3
Entry by the owner	
without permission	3
Showing the property	4
Showing the property to	
potential new tenants	4
Showing the property to	
potential purchasers	4
Maintenance and repairs	5
Owner's obligation to maintain	
the premises	5
Tenant's obligations	5
General repairs	5
Urgent or emergency repairs	5
Fuses, light globes and tap washers	6
Locks and security devices	6
Alterations, additions and fixtures	6
If the owner cannot be contacted	6
Disputes about repairs	7
Water charges	7
Ending a tenancy	7
Ending a fixed term	
tenancy agreement	7
If the tenant wishes to leave early	8
Costs of leaving early or	
abandoning a property	8
Abandonment	8
Disposal or sale of	
abandoned goods	9
If the owner wants the tenant	
to leave early	9
Ending a tenancy agreement	
with no fixed term	10
Court-ordered end to	
a tenancy agreement	10
Serious damage or injury	10
Family violence	10
Payment of rental bonds	11
Paying a bond (security deposit)	11
If there's more than one person	
paying the bond	11
If Colony 47 or Anglicare	
contribute to the bond	12
Transferring a bond	12
Change of ownership	
or management	12
Change of tenants	12
Claiming the bond	13
Claim by the tenant(s)	13
Claim by the owner or agent	13
Claim by other person or	
organisation who contributed	
to bond	14
Disputes about bond claim	14
Notices to vacate/terminate a	
tenancy agreement	14
Notice to vacate (for use by owners)	15
Number of days in the notice period	15
Contents of the notice to vacate	15
Arrears in rent	15
If the tenant will not leave	16
Regaining possession of the property	16
Notice to terminate	
(for use by tenants)	16
Problems and disputes	17
Enforcing rights in a court	17
About the Tasmanian	
Residential Tenancy Act 1997	17
Exemptions	17
Definitions	18



Introduction

Everyone who owns or rents a residential property in Tasmania has rights and responsibilities according to the *Residential Tenancy Act 1997* as amended from time to time.

This booklet describes what tenants, property owners and property agents must do to ensure they comply with the rules and regulations in the Act.

If you have questions that aren't answered here please phone **1300 654 499**, email rda@justice.tas.gov.au or visit www.consumer.tas.gov.au/renting.

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 must give the tenant a copy of this booklet. Copies can be purchased from *Service Tasmania* shops or downloaded free from 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.

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 they have broken a condition of the agreement. This is true even if the property is sold. For details of what happens at the end of a fixed term agreement see the section **Ending a fixed term tenancy agreement** on page 7.

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 with no fixed term see the section **Ending a tenancy agreement with no fixed term** on page 10.

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 (security deposit up to the cost of four weeks rent) – see the section **Payment of rental bonds** on page 11

- 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 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.

Tenants: Make sure you receive and keep receipts for all your costs.

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 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.

Record keeping

It's a good idea for both tenants and owners to keep a rental file. This should contain records of all rental agreements, leases, condition reports, letters, requests for repairs, notices, receipts and invoices.

The owner should 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.

For more information about resolving disputes, please refer to the back cover of this booklet.

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
- the amount received.

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 notice, specifying:

- the amount of the increase
- the day on which the increase begins.

Rent can only be increased:

- 60 days after notice of the increase is given and 6 months after the last increase in rent (4 months plus 60 days), or
- if the notice is given within the first 60 days of the tenancy, 6 months after notice of an increase, or
- 6 months after an order from a magistrate relating to rent.

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 a magistrate, who may order the owner to change the increase if it is not in line with other rents charged for similar properties in similar locations.

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 contact any of the services noted under **Problems and legal disputes**, as listed on the back page of this booklet.

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 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 once in the first month of the tenancy and then once every three months afterwards).

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 prospective purchasers or prospective tenants. If a mutually acceptable

time cannot be agreed the following regulations apply.

Showing the property to potential new tenants

If a mutually acceptable time cannot be agreed, 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 a mutually acceptable time cannot be agreed, 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.



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) which existed 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 are urgent they must be made as soon as possible. See the section **Urgent or emergency repairs** on this page.

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 fair 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, we recommend the notification is made in writing and that the tenant keeps a copy.

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

Urgent or emergency repairs

Urgent repairs are usually required when damage occurs – a broken window from a storm, for example – or when an essential service has stopped working. If this happens:

- the tenant must notify the owner of the need for urgent repair 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.

Example: If one hotplate ceased to work, a stove would continue to function. This would be a general repair, not an urgent repair. However, if a number of plates weren't working or the stove did not work at all, this would be an urgent repair.

Fuses, light globes and tap washers

The tenant is responsible for repairing or replacing electrical fuses, light globes and tap washers. However, the owner may prefer to arrange repairs if the tenant can't carry out the repair adequately themselves. The owner is responsible for specialist lighting such as bathroom heat lights, garden lights and outdoor sensor lights.

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, the Tenants Union of Tasmania, the Private Rental Tenancy Support Service (PRTSS) 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.

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 should contact Consumer Affairs and Fair Trading, the Tenants Union of Tasmania, PRTSS 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 a magistrate 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 repair. See the section **Notices to vacate/terminate a tenancy agreement** on page 14.

Water charges

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

- a council 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 residential tenancy agreement allows the owner to pass the water charge 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.

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.

Usually, when the expiry date is reached:

- the tenant leaves of his or her own accord
- the owner serves a notice to vacate, asking the tenant to leave (the owner may serve the notice within 28 days of the expiry date) – see the section **Notices to vacate/terminate a tenancy agreement** on page 14
- the tenant and owner agree in writing to extend the agreement for a new fixed period (they have up to 28 days after the expiry date to do so)
- the tenant serves a notice to terminate (he or she has up to 28 days after the expiry date to do so) (see the section **Notices to vacate/terminate a tenancy agreement** on page 14 for more information).

If, after 28 days of the expiry date, no new agreement has been made and a notice to vacate or a notice to terminate has not been served, the tenancy agreement converts to an agreement of no fixed term. See the **Agreements with no fixed term** section on page 1.

If the tenant wishes to leave early

If a tenant wishes to leave a property before the end of the tenancy

agreement he or she should give as much notice as possible to the owner of their intended date of departure. See the section **Notices to vacate/ terminate a tenancy agreement** on page 14 for more information.

In this situation the tenant normally is 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. The tenant may help the owner to find a replacement tenant, for example by advertising for one.

The owner or agent may charge the departing tenant for the costs of re-letting the property on a pro-rata basis.

Costs of leaving early or abandoning a property

Real estate agents who manage a property for the owner can claim the re-letting costs from the bond. These include:

- the cost of assessing applications from prospective tenants
- showing the property to prospective tenants
- advertising
- making a condition report for the new tenant.

These charges must reflect actual expenses incurred by the agent.

Costs may be claimed in proportion to the amount of time before the agreement would have expired.

Example: The agreement is for a fixed term of 12 months. The tenant leaves after 9 months. The owner or agent incurs costs of \$180 to re-let the property. The owner or agent may charge the tenant one quarter of this cost being \$45.

Agents can also charge the owner a fee for re-letting; they cannot charge the tenant this fee. Re-letting costs cannot be charged if the tenant is evicted following a notice to vacate or an order from the Magistrates Court.

Owners who manage their own property can also claim re-letting costs in proportion to the amount of time before the agreement would have expired. Normally those costs consist of advertising; owners who manage their own property cannot claim costs for their time.

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.

Abandonment

A property is said to be abandoned if:

- the tenant has left the property without notice, and
- notice of termination has not been given by the tenant, and



- 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.

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 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.

If the owner wants the tenant to leave early

An owner may only request 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 28 days notice must be given).

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 28 days notice that the property is to be sold, renovated or used for another purpose other than as a rental property
- a magistrate orders that the agreement be terminated.

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.

Owners: An order of termination can deliver vacant possession on the day that the order is made. If the tenant does not comply with the order you should contact the Magistrates Court for advice on the process for forcible eviction.

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.



Payment of rental bonds

From 1 July 2009 rental bonds must be paid to the Rental Deposit Authority (RDA) or to a real estate agent. If they are paid to the agent, then the agent must forward the bond to the RDA. This rule applies to existing rental agreements that are renewed or extended after 30 June 2009. It will be illegal for private property owners to receive a bond after this date.

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. The form states the amount of the bond.
- Everyone who contributes to the bond must sign the form. This includes the tenants, Colony 47 or Anglicare, and anyone else who contributes money but does not live at the rental property.
- 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 several receipts, one of which must be given to the owner.

The tenant may then gain access to the property. 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 from *Service Tasmania* will not include a bond contribution from Anglicare or Colony 47. 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.

Tenants and owners: Keep your receipt! It contains a Bond Number that is needed when claiming the bond back at the end of the tenancy.

If there's more than one person paying the bond

More than one person can contribute to a bond, whether they're listed on the rental agreement or not.

Each contributor must fill in the relevant section of the Bond

Lodgement Form stating their name and how much they contributed. Each contributor will then be able to claim back their portion of the bond when the tenancy ends.

Only the people named on the Bond Lodgement 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 Colony 47 or Anglicare contribute to the bond

If Colony 47 or Anglicare pay some of a bond, they will fill in part of the Bond Lodgement Form. They will pay the RDA directly.

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 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, 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.

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 can not 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. 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, and whose signature is shown on the Bond Lodgement Form, is entitled to claim back their portion of the bond.

The owner must supply the tenant with a signed Claim Form within three days of the end of the tenancy.

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

Any bond contribution by Colony 47 or Anglicare 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 also sign the Claim Form at the end of the tenancy, the RDA will pay out the bond as soon as possible. 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 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 Claim Form or cannot be contacted the tenant may

submit a Claim Form without the property owner or agent's signature. If the RDA cannot contact the owner or agent within 10 days they will pay the bond to the tenant.

Claim by the owner or agent

If the tenant cannot be contacted or fails to lodge a Claim Form the property owner or agent may submit a Claim Form that has only his or her signature on it. 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 Residential Tenancy Commissioner will assess the claim.

If the owner or agent lodges a claim and the tenant or other contributors to the bond disagree with the claim, the tenant can either lodge a Dispute Form or a Claim Form for a different amount. The matter will then be treated as a formal dispute. See the section **Disputes about bond claim** on page 14.

The property owner or agent must supply evidence to support any claim against the bond. This might include, for example, a copy of:

- the condition report
- receipts, quotes and invoices
- photographs
- the lease schedule
- the rental ledger
- if a private property owner, bank receipts showing rent transfers.

The bond will be paid out based on the assessment made.

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 property owner or tenant can't be contacted within 10 days the matter will be treated as a formal dispute.

Disputes about bond claim

Bond disputes are decided by the Residential Tenancy Commissioner (RTC). If you wish to dispute the repayment of a bond you should obtain a Dispute Form from Consumer Affairs and Fair Trading – call **1300 654 499** or download the form from www.consumer.tas.gov.au/renting/disputes.

Post the completed form to:

Residential Tenancy Commissioner
GPO Box 1244
Hobart Tasmania 7001
Australia

You should include any information that supports your claim such as photographs, and copies of the lease, condition report, quotes, invoices, rent receipts, notices and correspondence.

You will be sent a formal copy of the Commissioner's decision. If you do not agree with the RTC's decision you have

7 days in which you can appeal the matter to the Magistrates Court.

If the RDA holds the bond and no appeal is lodged the RDA will pay out the bond after 7 days. If an appeal is lodged the RDA will pay out the bond only after a magistrate has made a ruling.

If the RDA does not hold the bond the property owner or agent must forward any disputed bond money to the RDA once a dispute has been lodged. The RDA will hold the money in trust until the matter is resolved.

Notices to vacate/ 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 registered mail 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, you would be wise to have a witness who can vouch for your having served it in one of the above ways. Further advice



on how notice may be served can be sought from the Magistrates Court. Visit their website at:

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

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:

- 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 14 days has passed, the notice has no effect. (See also **Arrears in rent.**)
- The tenant has caused a substantial nuisance.
- For a fixed term agreement, if the agreement is due to expire within the next 28 days.

Example: If the notice is given 14 days before the expiry date it takes effect on that date. If the notice is given 7 days before the expiry date it takes effect 7 days after that date.

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

- For an agreement of no fixed term, if the property is to be sold, renovated or used for a purpose other than rental.
- 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.

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

Number of days in the notice period

The notice to vacate takes effect 14 'clear days' 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.

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.

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 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 agreement 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 can leave on 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 **If the tenant wishes to leave early** on page 7.



Problems and disputes

If you have a dispute or a problem, you should first discuss it with the other party. If you cannot solve the problem or you need further information or advice, contact Consumer Affairs and Fair Trading or the Legal Aid Commission. If you are a tenant you can also seek advice and assistance from the Tenants Union of Tasmania or PRTSS. Their contact details are given 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; however, it may be wise to seek advice before taking this action. You should contact one of the organisations listed on the back of this booklet.

About the Tasmanian Residential Tenancy Act 1997

Generally the *Residential Tenancy Act 1997* applies to all residential tenancy agreements in Tasmania. However, some specific types of accommodation or agreements are exempted under the Act. These are noted on the next page.

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.

The Act applies to agreements to rent boarding premises; however, there are some different rules that apply to boarding premises.

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

If you are unsure whether the Act applies to your rental agreement you should contact Consumer Affairs and Fair Trading for advice: www.consumer.tas.gov.au/renting or phone **1300 654 499**.

Exemptions

The Act does not apply to emergency and short-term accommodation provided for people at risk of, or experiencing, homelessness or domestic violence, where the length of tenure is normally 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 Tasmania University Colleges
- 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*
- any premises exempted by regulation.

Definitions

A **tenant** is someone who rents a property from the property's **owner**.

The owner may employ a **property manager** 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.

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 11.

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 is responsible to the owner for any damage and is responsible for the rental bond and the rent for the property.

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.

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.

If the owner lives on the premises and rents out only one or two rooms the Act does not apply.



Tasmania
Explore the possibilities

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/publications.

Consumer Affairs and Fair Trading 1300 654 499
www.consumer.tas.gov.au/renting

Office of the Residential Tenancy Commissioner 1300 654 499
www.consumer.tas.gov.au/renting/disputes

Real Estate Institute of Tasmania 6223 4769
www.reit.com.au/faqrenting

Tenants Union of Tasmania 1300 652 641
www.tutas.org.au

Private Rental Tenancy Support Service (PRTSS) 1300 729 400

Information about rental bonds

Rental Deposit Authority 1300 654 499
www.MyBond.tas.gov.au

Enquiries about housing assistance or public housing

Housing Tasmania Real Estate Services 1800 060 901
www.dhhs.tas.gov.au/services/channels/abouthousing

Colony 47 1800 265 669
www.colony47.com.au

Anglicare Tasmania Tenancy Support Services 6273 5855
www.anglicare-tas.org.au

Problems and legal disputes

Legal Aid Commission of Tasmania 1300 366 611
www.legalaid.tas.gov.au

Consumer Affairs and Fair Trading 1300 654 499
www.consumer.tas.gov.au/renting

Hobart Community Legal Service 6223 2500
www.hobartlegal.org.au

Magistrates Court of Tasmania
www.magistratescourt.tas.gov.au/divisions/civil/residential_tenancy

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