

# Residential Tenancies Terminations

This fact sheet is based on information contained in:

- [The Residential Tenancies Act 1997](#); and
- [Residential Tenancies \(COVID-19 Emergency Measures\) Regulations 2020](#)

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## Scope of this Fact Sheet

Although the fact sheet is about residential tenancies it will not refer to rooming houses, caravan parks and moveable dwellings, site agreements, specialist disability accommodation or tenancies with a fixed term of more than 5 years. However, this does not mean that legislation and regulation have not changed for those categories of residential accommodation. They are excluded because most members are not involved in managing those types of residential accommodation.

### **Residential Tenancies Act 1997 (RTA)**

The COVID-19 Omnibus (Emergency Measures) Act 2020 made significant changes to the RTA, mainly in the form of the new created Part 16. However, in the process there were many errors and omissions. **Beware of the RTA Version 092 with amendments as at 25<sup>th</sup> April**, as although it is readily available on [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) it contains the errors and omissions.

### **Residential Tenancies (COVID-19 Emergency Measures) Regulations**

Among other things these regulations correct the errors in and omissions from the RTA as referred to above.

### **The Director Consumer Affairs Victoria**

The Director of Consumer Affairs Victoria is referred to as “The Director”.

### **VCAT**

VCAT is referred to as “the Tribunal”.

### **Residential Tenancy Terminations**

A notice to vacate cannot be given to a tenant under Subdivision 4 of Part 6 and if it has already been given it is of no effect. (section 544)

**Section 547** allows for termination if the Tribunal makes an order under:

217	By agreement
218	By consent
220	Abandonment
221*	Sublet without permission
224	By merger
225	By disclaimer
226	Tenant terminates - unfit for habitation or not available for occupancy
228*	Death of a sole Tenant
233B	Family violence / personal safety

**Section 548** states a landlord or mortgagee may, subject to the Residential Tenancies Dispute Resolution Scheme, apply to the Tribunal for a termination order based on one of the reasons specified in section 549. If the Tribunal does not make a possession order it must specify a termination date that is the appropriate number of days from the date of its decision [sections 549(3)]. The reasons that can be used [549(2)(a)-(t)] and the number of days from the date of Tribunal's decision as specified in section 549(3A) are summarised below:

549(2)(a)	intentional or reckless damage	on the day
549(2)(b)	endangers neighbours, landlord, agent etc	on the day
549(2)(c)	threatened or intimidated landlord, agent etc	14 days
549(2)(d)	failed to comply with Tribunal order regarding a breach of duty	14 days
549(2)(e)	(relates to managed premises – rooming houses, caravan parks etc)	on the day
549(2)(f)	illegal use of premises	14 days
549(2)(g)	(applies where the Director of Housing is the landlord)	14 days
549(2)(h)	(applies where the Director of Housing is the landlord)	14 days
549(2)(i)	not paying rent where could do so without hardship	28 days
549(2)(j)	property being sold	60 days
549(2)(k)	(applies where the Director of Housing is the landlord)	60 days
549(2)(l)	unfit for habitation	on the day
549(2)(m)	(applies where landlord is a public statutory authority for housing)	14 days
549(2)(n)	assigned or sublet without permission	14 days
549(2)(o)	to be occupied by landlord or family member etc	60 days
549(2)(p)	owned by public authority and to be used for public purpose	60 days
549(2)(q)	(applies where landlord is a public statutory authority for housing)	90 days
549(2)(r)	non-compliance with order that there be no pet	28 days
549(2)(s)	(applies where the Director of Housing is the landlord)	30 days
549(2)(t)	any other prescribed matter	not stated

\* If necessary, a notice to vacate can be given in the case sections 221 and 228 because they are not in Subdivision 4 of Part 6.

**Section 549(2)(t) – any other prescribed matter**

There are several sections in Subdivision 4 of Part 6 which have previously required a notice to vacate and which are not addressed in the newly created section 549(2), unless 549(2)(t) “any other prescribed matter” proves useful. If any of these sections need to be used a notice to vacate cannot be given (section 544) and an application under 548(1) and 549(2)(t) would be the only option. The sections are:

247	Failure to pay bond
249	Successive breaches by tenant
251	Permitting child to reside in premises
254	Landlords principal place of residence (fixed term tenancy)
255	Repairs
256	Demolition
257	Premises to be used for business
261	End of fixed term tenancy
263	Notice to vacate for no specified reason
267	Notice by owner
268	Notice by mortgagee

The Act does not direct the Tribunal as to what timeframes it must apply when the application is under 549(2)(t).



### **Making an application**

Section 548 states that subject to the Residential Tenancies Dispute Resolution Scheme, a landlord or mortgagee may apply to the Tribunal for an order terminating a tenancy agreement. At the time of making an application to the Tribunal for an order terminating the tenancy provide a copy of the application to the Director of Consumer Affairs Victoria and to the tenant.

The copy to the Director is necessary because of the application being subject to the Residential Tenancies Dispute Resolution Scheme.

Section 545 allows the tenant to give a 14 day notice of intention to vacate once they have been given notice of the application under section 548(1) to the Tribunal for a termination order.