

WINTRINGHAM HOUSING BREACHES AND EVICTIONS POLICY

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Purpose This policy will outline the manner in which a breach or eviction may be issued in accordance with the RTA.

Policy Statement Wintringham Housing will address any breach of duty under the Act when they relate to:

- using the premises in a way that caused a nuisance;
- interfering with peace, privacy and comfort of neighbours;
- causing damage to the property;
- damaging the common areas;
- not keeping the premises clean;
- installing fixtures without consent;
- altering, renovating, or adding to the premises without consent;
- failing to restore the premises to their prior condition;
- failing to supply new keys;
- changing lock without consent;
- failing to permit entry into the premises.

In general, a Breach of Duty Notice will only be issued when a renter has already been formally advised in writing that the particular issue of concern was inappropriate and that same issue has occurred again. This clause will not apply when breaches are particularly serious.

Evictions at Wintringham are unusual and will only be considered where all other avenues available to remedy the matter have been exhausted.

This policy should be applied in conjunction with police intervention when required and appropriate.

Background and Context Consumer Affairs (Vic) and the Residential Tenancy Commissioner (Tas) advises that renters and rental providers all have a responsibility to meet the terms of their rental agreement and the *Residential Tenancies Act 1997* (the Act).

If one party does not meet their duties under the Act, the other may serve them with a Breach of Duty Notice (Vic) or a Notice to Vacate (Tas). This is a formal warning to the party who is not meeting their obligations.

A notice must:

- set out the breach of duty under the Act
- detail the loss or damage caused by the breach
- state that the breach must be fixed or compensation paid and that a similar breach must not be committed
- advise that if there is no compliance with the notice, an application may be made to the:
 - Victorian Civil and Administrative Tribunal (VCAT) or
 - Tasmanian Residential Tenancy Commissioner (RTC) for a compensation or compliance order
- advise that if the same breach occurs for a third time (and a valid notice was given for that breach on the first two

occasions), notice of intention to vacate or notice to vacate may be given.

Victoria - If the breach is not resolved within the time set out in the Act (this will vary depending on the particular duty), and an application is made to VCAT, the tribunal will hear the matter and make a decision.

Tasmania – If any of the parties to a dispute disagrees with the Commissioners decision, they can appeal to the Magistrates Court.

Note: This policy does not address actions to be taken when a tenant has rent arrears. Refer to [Wintringham Housing - Rental Arrears](#) (TMM 1.22).

Commitment	Wintringham Housing is committed to sustaining tenancies with considerations taken under the <i>Charter of Human Rights and Responsibilities Act 2006</i> .
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Scope	This policy applies to all rental properties owned and/or managed by Wintringham Housing and Wintringham.
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Definitions

Authorised Person	General Manager or delegate
GMHCS	General Manager Housing and Client Support
HHS	Housing and Homelessness Support
Manager	For the purposes of this policy, Manager will refer to the following Managers, unless stated otherwise: <ul style="list-style-type: none"> - HHS Manager (Victoria – Metro and Regional) - Tenancy Manager - HHS State Manager (Tasmania)
NTV	Notice to Vacate
Renter	A person renting a property, who is also known as a tenant.
RTA	Residential Tenancy ACT (1997) (Victoria and Tasmania).
Rental Provider	The person or entity that owns or manages the property being rented out. May also be referred to as the landlord.
RTC	Residential Tenancy Commissioner (Tas)
VCAT	Victorian Civil and Administrative Tribunal (Vic)
Wintringham Housing	Refers to both Victoria Wintringham Housing owned and managed and Tasmania Wintringham managed properties unless stated.

Responsibilities

Tenancy Management Worker and Housing Support Worker	Will work together with the resident to assist with a resolution to support the renter to retain their housing or look for alternative housing options.
Tenancy Management Workers (TMW)	Must consult the Tenancy Manager and HHS Manager prior to issuing a breach notice.
Tenancy Manager	Will ensure Tenancy Management Workers understand and adhere to this policy.
HHS State Manager Tasmania / Tenancy Manager (Victoria)	Responsible for authorising any breach of duty notices that are issued.
GMHCS	<p>Will review all documentation relating, to ensure that evidence supports a decision to evict.</p> <p>This step will only be taken when all other avenues available to remedy the matter have been exhausted. All evidence will be provided to the GMHCS.</p> <p>Will communicate all decisions to evict to the CEO.</p>

Procedure

1. Investigations

- 1.1 As soon as the Tenancy Management Worker becomes aware that a potential breach of duty has occurred, they must:
 - Notify their direct line manager and the site HHS Coordinator
 - Start an investigation.
- 1.2 Where the Tenancy Management Worker has identified a potential conflict of interest, they should immediately refer the matter to their direct line manager.

Refer to [Conflict of Interest Policy](#) (L_M 3.14)
- 1.3 Following discussion, the Manager will decide whether or not the Tenancy Management Worker should complete the investigation or whether this should be delegated to a different staff member. This policy will refer to the person nominated to conduct the investigation as 'the investigator'.
- 1.4 When conducting the investigation, the investigator will seek to acquire formal statements, complaints or incident reports from those who witnessed the potential breach or who were directly affected by the matter.

Second hand reports will not be considered to be appropriate evidence. Where the breach involves property damage or alteration, photographs should be taken.

- 1.5 In collecting evidence, the investigator may assist the witness to write or type the statement, complaint or incident report. The investigator must ensure that only the words and descriptions of the witness themselves are reported. The witness must sign the document.
- 1.6 All documentation collected should be forwarded to the Tenancy Manager and the HHS Manager as soon as possible.
- 1.7 The Manager(s) will review all information in relation to the matter and decide whether or not there is sufficient evidence to issue a Breach of Duty Notice or whether it is more appropriate to issue a warning letter.

2. Lodging the Breach Notice

- 2.1 A Breach of Duty Notice should be completed using:

- 2.1.1 **Victoria** - the VCAT online system at <https://online.vcat.vic.gov.au/vol/index.jsp>

The Notice will be stored (for approximately 4 months after the expiry date) for future use. Two identical copies of the Notice should be generated, one for the renter and one to be placed in the renter's file.

- 2.1.2 **Tasmania** – [Wintringham Housing - Breach Notice Tasmania](#) (TMM Fm 1.21b)

3. Notifying Renter of Breach Notice

- 3.1 Wherever possible, notices should be handed and explained to the renter, ideally by two (2) Wintringham staff members, one representing each team (support and tenancy).
- 3.2 The notice to the renter will be sent to them by registered mail and another copy sent via regular mail. A copy of the breach notice with the receipt for the registered mail is to be attached to the renter's Wintringham Housing file.

Every effort must be made to ensure that the renter receives the breach notice within:

Victoria: 7 days of the notice being lodged with VCAT

Tasmania: 7 days of Wintringham determining the breach has occurred.

- 3.3 A letter will accompany the breach notice. (i.e. [Wintringham Housing - Breach Notice Tasmania](#) TMM Fm 1.21b or [Wintringham Housing - Letter Application - VCAT](#) TMM Fm 1.21d).

The letter will explain why the breach has been issued and the penalties sought under the breach. The letter must also detail the following:

- If no compensation is sought the letter must explain that the notice requires the renter to make amends for the matter of concern but acknowledges that the matter of concern did not result in any financial cost to them.
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- The renter must be made aware that failure to address the issue of concern may result in further action being taken including application for a Notice to Vacate

- 3.3.1 **Victoria** - The Notice of Breach of Duty to Renter/s of Rented Premises' notice requires the applicant (rental provider) to determine a dollar amount to be sought in compensation – unless the rental provider has proof of costs related to the breach, a line should be ruled through this sentence.

If the rental provider chooses to put a dollar amount in the compensation part of the VCAT form, the letter must advise the renter under what circumstances the clause in the notice will be used, and if there are conditions relating to the breach that would allow them to avoid the penalty.

- 3.3.2 **Tasmania** – Not applicable, no compliance order processes exist in Tasmania.

- 3.4 If, on or after receipt of the notice, the renter meets the requirements of the breach and the matter is resolved, a further letter will be sent to them informing them that the matter is closed and no further action will be taken. A copy of the letter will be kept on the renter's file.

- 3.4.1 **Victoria** - In addition, VCAT will need to be notified that a hearing is not required.

4. **Notice to Vacate**

- 4.1 Where a renter consistently fails to meet their obligations under the *Residential Tenancies Act* and have either:

- failed to comply with a Breach of Duty Notice or have been issued with two previous breaches for a similar matter, or
- where they present a risk of harm to others or the property itself,

the Manager(s) will make a recommendation to GMHCS with all supporting evidence to pursue a Notice to Vacate to be issued. This step will only be taken when all other avenues available to remedy the matter have been exhausted.

- 4.1.1 **Tasmania** - If a breach notice is issued and not remedied within the specified timeframe, Wintringham may proceed with a [Wintringham Housing - Notice to Vacate Tasmania](#) (TMM Fm 1.21b).

- 4.1.2 **Victoria** - If a breach notice is issued and not remedied within the specified timeframe, Wintringham may proceed with a Notice to Vacate via VCAT.

- 4.2 The GMHCS will review all documentation relating to the matter to ensure that evidence supports a decision to evict.

- 4.3 Where uncertainty exists or when the GMHCS has identified that they have a conflict of interest and cannot make an unbiased decision, they will refer the matter to the CEO or delegate for a final decision.

- 4.4 Once a decision has been reached and a recommendation made that the renter will be evicted, the matter will be communicated to the CEO.
- 4.5 The Notice to Vacate must:
- be sent to the renter at the premises by registered post, and sent via regular mail directly and where possible, hand delivered by Wintringham staff to the renter themselves.
 - be addressed to the renter.
 - give a specific reason or state that no reason is given.
 - allow the correct amount of time to give the notice.
 - give the date that the renter is to vacate by.

The timeframes for serving a notice to vacate under the *Residential Tenancies Act 1997* differ, depending on the reason.

5. Appeals and Advocacy

- 5.1 All renters have right to appeal any breach put forward to them.

Refer to the [Advocacy Guidelines](#) (L_M 3.21)

5.1.1 **Victoria** – If a renter would like to challenge the Notice to Vacate, they should be directed to contact Tenants Victoria.

5.1.2 **Tasmania** – If a renter would like to challenge the Notice to Vacate, they should be directed to the Tenants Union of Tasmania.

Any challenge to the Residential Tenancy Commissioner's decision will be presented to the Magistrates Court.

Legislation & Standards

Residential Tenancies Act (1997) Vic
Residential Tenancy Act (1997) Tas
Charter of Human Rights and Responsibilities Act (2006) Vic

Resources

Vic - Renters Guide handbook
<https://www.consumer.vic.gov.au/housing/renting/starting-and-changing-rental-agreements/resources-and-guides-for-renters/renters-guide>

Tas – The Rental Guide
<https://www.service.tas.gov.au/services/housing-and-property/renting-a-home/the-rental-guide>

Tenancy Management Manual 2023
<https://providers.dffh.vic.gov.au/tenancy-management-manual>

Related Documents

L_M 3.13	Conflict of Interest Policy
L_M 3.20	Complaints Policy
TMM Ag 1.3a	Vic – Residential Tenancy Agreement
TAS Ag 1.3a	Tas – Residential Tenancy Agreement
TMM Ib a-d	Welcome Booklets
TMM Fm 1.21a	Letter to tenant re: noise
TMM Fm 1.21b	Breach Notice Tasmania
TMM Fm 1.21c	Notice to Vacate Tasmania
TMM Fm 1.21d	Letter Application - VCAT
TMM FI 1.21a	Breach Compliance Infographic

TMM Tp 1.21a	Evidence Pack (Possession - Arrears) - Template
TMM Tp 1.21b	Evidence Pack (Compliance - Breach or Behaviour) - Template
TMM Tp 1.21c	Evidence Pack (Possession - Breach or Behaviour) - Template

Authorisation

This policy has been authorised by General Manager Homelessness and Client Support – December 2024

Review Date

December 2027

This policy is published on the Wintringham website www.wintringham.org.au