

## RESIDENTIAL TENANCIES ACT – MANAGEMENT OF BREACHES AND EVICTIONS

TMM 1.21

### Purpose & Scope:

Consumer Affairs advises that tenants, residents, landlords and owners 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. This is a formal warning to the party who is not meeting their obligations.

A breach of duty 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) for a compensation or compliance order
- advise that if the same breach occurs for a third time (and a valid Breach of Duty notice was given for that breach on the first two occasions), notice of intention to vacate or notice to vacate may be given.

If the problem is not fixed 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.

Please note: This policy does not address actions to be taken when a tenant has rent arrears.

### Definition:

Authorised Person – General Manager Operations or delegate.

### Responsibility:

The General Manager Operations is responsible for authorizing any breach of duty notices that are issued.



## RESIDENTIAL TENANCIES ACT – MANAGEMENT OF BREACHES AND EVICTIONS

TMM 1.21

### Policy:

- 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 tenant 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. The relevant Department of Health criteria for a Category One or Two incident will be used when determining whether the issue was of a serious nature (Please see L&M 22 – Wintringham Incident Reporting P&P)
- As Landlord, Wintringham Housing's principal concern is to sustain residents' accommodation, consideration will be taken with regards to the tenant's human rights under the Charter of Human Rights and Responsibilities Act 2006.
- This policy should be used in conjunction with police intervention when required and appropriate. Criminal behaviour should be reported to the police.

### Procedures:

1. As soon as the Tenancy Worker becomes aware that a potential breach of duty has occurred they must:
  - Notify the relevant Community Housing and Support Manager and the site Housing Support Worker
  - start an investigation.



## RESIDENTIAL TENANCIES ACT – MANAGEMENT OF BREACHES AND EVICTIONS

TMM 1.21

2. Where the Tenancy Worker believes there is a conflict of interest, they should immediately refer the matter to the Tenancy Manager. Following discussion, the Tenancy Manager will decide whether or not the Tenancy 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’.
3. 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. Secondhand reports will not be considered to be appropriate evidence. Where the breach involves property damage or alteration, photographs should be taken.
4. In collecting evidence, the Investigator may write or type the statement, complaint or incident report for the witness, but the witness must sign the document and the Investigator must ensure that only the words and descriptions of the witness themselves are reported.
5. All documentation collected should be forwarded to the General Manager Operations as soon as possible.
6. The General Manager Operations will review all information in relation to the matter and decide whether or not there is sufficient evidence to issue a breach of duty or whether it is more appropriate to issue a warning letter.
7. The General Manager Operations will also ensure that the relevant Community Housing and Support Manager and Housing Support Worker/s are informed that tenancy is considering issuing a breach and ensure that no mitigating factors exist which would affect the decision being made.
8. Where uncertainty exists or when the General Manager Operations feels they have a conflict of interest and cannot make an unbiased decision, they will refer the matter to the CEO for a final decision.

### Completing the notice

1. A breach of duty notice should be completed using 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 tenant and one to be placed in the tenant’s file.



## RESIDENTIAL TENANCIES ACT – MANAGEMENT OF BREACHES AND EVICTIONS

TMM 1.21

2. Wherever possible, breach of duty notices should be handed and explained to the tenant. In order to ensure best practice, it is best if this is done by two staff members together, the two staff members should include where possible the site Tenancy Worker or delegate and the relevant Community Housing and Support Manager or delegate. Due to the nature of the breach or the circumstances of the individual, it may be required that another Tenancy Staff member and/or Wintringham staff member deliver the breach notice, this will be considered on a case by case basis.
3. If it is not possible to hand the notice to the tenant, the breach should be sent to the tenant by Registered Mail and another copy sent via normal mail. The receipt for the Registered Mail is to be attached to the breach notice and kept on the tenant's file. Please note: Every effort must be made to ensure that the tenant receives the breach notice within 7 days of the notice being lodged with VCAT.
4. A letter will accompany the breach notice; Wintringham Housing has available draft versions for this purpose. The letter will explain why the breach has been issued and the penalties sought under the breach. It should be noted that the VCAT form requires you to determine a dollar amount to be sought in compensation – unless you have proof of costs relating to the breach you should rule a line through this sentence. The letter must provide further explanation of this clause to the tenant:
  - If no compensation is sought the letter must explain that the notice requires the tenant to make amends for the matter of concern but acknowledges that the matter of concern did not result in any financial cost to the applicant. The tenant 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;
  - If you choose to put a dollar amount in the compensation part of the VCAT form, the letter must advise the tenant under what circumstances this clause in the notice will be used and if there are conditions relating to this particular breach that would allow them to avoid this penalty.
5. If, on or after receipt of the breach notice, the tenant 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 now closed and no further action will be taken. A copy of the letter will be kept on the tenant's file and VCAT will be advised that a hearing is not required.



## RESIDENTIAL TENANCIES ACT – MANAGEMENT OF BREACHES AND EVICTIONS

TMM 1.21

6. If the tenant fails to comply with the breach order the General Manager Operations may authorize or direct staff to pursue compliance through a VCAT compensation or compliance order. In general though, this step will only be taken when all other avenues available to remedy the matter have been exhausted. In order to ensure that this has occurred, each case of this nature should be referred to the Wintringham Case Conference.

### Eviction

1. In the few instances where a tenant 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 Tenancy Manager may recommend that a notice to vacate be issued.
2. The General Manager Operations will review all documentation relating to the matter to ensure that evidence supports a decision to evict.
3. The General Manager Operations will liaise with the relevant Community Housing and Support Manager and Housing Support Worker/s to ensure that they support the recommendation to issue a notice to vacate.
4. Where uncertainty exists or when the General Manager Operations feels they have a conflict of interest and cannot make an unbiased decision, they will refer the matter to the CEO for a final decision.
5. Once a decision has been reached and a recommendation made that the tenant be evicted. The matter will be referred to the CEO.
6. The notice to vacate must:
  - be sent to the tenant at the premises by registered post or hand delivered directly to the tenant themselves;
  - be addressed to the tenant;
  - give a specific reason or state that no reason is given;
  - be signed by the General Manager Operations or delegate;
  - allow the correct amount of time to give the notice;
  - give the date for the tenant to leave.

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



## RESIDENTIAL TENANCIES ACT – MANAGEMENT OF BREACHES AND EVICTIONS

TMM 1.21

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- Evictions at Wintringham are unusual and will only be considered where all other avenues available to remedy the matter have been exhausted and after As Landlord, Wintringham Housing's principal concern is to sustain residents' accommodation, consideration will be taken with regards to the tenant's human rights under the Charter of Human Rights and Responsibilities Act 2006. Unless exceptional circumstances apply, In order to ensure that this has occurred, each case of this nature should be referred to the Wintringham Case Conference.

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### References:

Complaints Policy  
Feedback and Improvement  
Residential Tenancies Act (1997)  
Residential Tenancies Act Regulations (1998)  
Charter of Human Rights and Responsibilities Act 2006  
Residential Tenancy Agreement  
MAH/Wintringham Contract  
Welcome Booklets  
Office of Housing Tenancy Management Policy and Procedures Manual (2003)  
National Community Housing Standards Manual (2010)  
TMM Fm 1.21a Letter to tenant re: noise

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