

www.rahug.org.au/join

Together we can

Educate and share information with each other about our rights as renters

Support and defend each other from exploitation and eviction

Build a long-term community of renters to self represent our rights as renters for safe and secure housing for all.

The Renters And Housing Union (VIC) is a member-run union of renters and people in precarious housing, formed through the Rentstrike as a response to COVID19.

We collectively organise for the right to safe and secure housing through self-advocacy, education, and frontline eviction defence.

organise@rahug.org.au

www.rahug.org.au

Insta: @rahunionvic

Twitter: @RAHUnion

FB: @rentersandhousingunion



The RAHU Guide To Terminations & Evictions

RAHU believes our members are stronger when we have access to useful and practical information about our rights. However, this is general information only, not legal advice. If you need legal advice, please contact a community legal centre.

Termination & Eviction

Eviction is a formal process and does take time. This document should be a quick reference for the process. It mostly covers legal evictions.

Eviction is a legal process which is usually weeks long. Renters in private tenancies have time to be prepared for and defend against eviction, renters in rooming houses have less time to organise against eviction. RAHU can discuss with you possible avenues against eviction.

Notice to Vacate (NTV) - Notices To Vacate are not eviction notices!

As part of the COVID19 Moratorium legislation, any Notice to Vacate served between March 20th, 2020 - March 29th, 2021 is invalid. After this date NsTV are back with some changes, detailed in a later section.

A Notice to Vacate (NTV) is a one-page document sent to the renter/s by the landlord or agent. This notice asks you to vacate and gives a period by which the landlord would like this to happen. This notice does not constitute eviction. It is the first formal step in a process.

NsTV contain 12 fields which cover the renters' and landlords details; the date at which the landlord/REA would like you to leave by ("termination date"); reason for the NTV, how the NTV was delivered and a signature.

All of these details must be correct otherwise the NTV does not apply.

- "9. Reason for Notice to Vacate" Landlords must reference a section of the Residential Tenancies Act (1997). This must be applicable to your situation. You can search for the Act and check the section at austlii.edu.au.
- Challenging an NTV formally happens at VCAT.
- Informally it can be done anytime. If you are certain your NTV is incorrect, wait until the final day of the notice period and send an email to your landlord/REA stating the notice is invalid. Don't tell them why (that's their job). RAHU can send and CC you into this email.
- If you believe the NTV was issued in retaliation for exercising your rights, for example asking for repairs or issuing a breach notice, VCAT will hear evidence on this.
- After the period of notice expires there will be a VCAT hearing for a Possession Order (see below). It is important you attend this hearing.

Termination Order

In some cases a landlord might ask VCAT to terminate a tenancy. There is no NTV issued for this, VCAT is being asked to make a decision. An example of when this might happen is during the COVID-19 eviction moratorium when NsTV were declared invalid landlords would apply to the Tribunal to have a tenancy terminated for various reasons, like rent arrears.

Possession Order

After the period of an NTV has elapsed the landlord can apply for VCAT to grant a possession order. This order is used by the landlord to purchase a warrant of possession.

At the hearing for the possession order VCAT will decide whether it is reasonable and proportionate to end the tenancy. If you are in hardship VCAT will take this into account and may grant an additional period of tenancy.

Warrant of Possession

The landlord purchases this from the Tribunal for \$114. They then have 30 days to deliver it to the local police station who have 14 days to carry out the eviction.

Eviction

Only the police carrying out a warrant of possession can forcibly evict you. Not your landlord, not some thugs, not a threatening email or official-looking letter. Only the cops.

Minimum Notice Periods (pre-March 29th)

These change for different notices but as a rough guide, this is the quickest notice periods with no challenge by the renter at any stage:

Private Tenancies: 15-28 days: 14 day Notice To Vacate, VCAT, Possession Order and Warrant of Possession on day 15, eviction within 14 days.

Rooming Houses: 0-17 days: Immediate NTV, VCAT within 2 days, WoP on day 3.

Victorian Civil & Administrative Tribunal (VCAT)

VCAT is not a court. It lacks any power to enforce its decisions. The important thing to note about VCAT is: if you don't show up, you lose. ATTEND YOUR HEARING. RAHU can help you prepare for VCAT and give you some pointers about what the process will be like. If you don't show up, you lose.

Decisions are made on the day by a Member. The inclinations of the Member play a role in the decisions which are made.

Being prepared is important. Evidence must be submitted in the days before the hearing and it helps to provide a cover letter. There are guides for this process at vcat.vic.gov.au. If you need help with this get in touch: organise@rahu.org.au. We can help with evidence organisation and submission as well as putting you in touch with a Tenancy Assistance and Advocacy Program (TAAP) provider to represent you at your hearing.

Notices To Vacate - What happens after March 29th 2021?

From March 29th, 2021, the Residential Tenancies Act Amendments (RTAA) will somewhat limit the reasons a landlord can end a tenancy.

There are no longer "No Grounds" NTVs. All Notices To Vacate must be made for a specific reason.

There are immediate NsTV for violence toward or "endangerment" of the landlord, their agents, contractors, neighbours etc in private tenancies as well as rooming houses.

No consent to pets

Serious threats or intimidation

Damages: serious and reckless

Damage to the property (ie. breaking a smoke alarm)

Danger: A notice cannot be given under this provision if a notice to leave has been provided for the act or omission under the 'violence on certain premises'

Once the NTV period has elapsed the LL/REA may apply to VCAT for a termination order. This ends the tenancy on a given date but cannot compel the renter to leave. If the renter still remains in the property the LL/REA can apply for a Possession Order. In some circumstances the LL can apply for both termination and a possession orders at the same hearing.