

The RAHU Guide To

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- (Victoria edition)



The **Renters And Housing Union (RAHU)** is Australia's first and largest member-run union of renters and people in precarious housing.

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

Renters' rights are only as strong as our willingness to enforce them. Talking to your housemates, neighbours, friends and other comrades about your plans, concerns, and successes helps us all grow stronger

Together, we can:

- Educate and share information about our renters' rights
- Support and defend each other from exploitation and eviction
- Build a robust community of renters to represent our rights for safe and secure housing for all

For member support email

organise@rahu.org.au

For general contact email

contact@rahu.org.au

rahu.org.au/join

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

Bonds

What is a bond?

A bond is a lump sum payment held by the Residential Tenancies Bond Authority (RTBA) in trust as an insurance on your lease. Your bond cannot be more than a month's rent for that property unless your rent is more than \$900 per week.

How do you claim your bond back?

Renting directly from the Landlord: If you're renting directly from the Landlord, you can take control of the bond's return by downloading a completed Bond Claim form for you and your Landlord to sign before forwarding it to the RTBA.

Note: It is an offence for a landlord to request or obtain your signature on a bond refund application form if the application does not specify the amount of bond to be refunded and the apportionment, if any, of the bond.

If the bond is to be paid back in full, ensure the bond amount is recorded in the 'Renter payment details' section before signing.

If the bond amount is agreed to be paid to the Landlord, then the Bond Claim form must be signed by the renter not earlier than 7 days before the termination date.

Renting through a Real Estate Agency: Agents must electronically lodge, claim, and transfer renters' bonds. The agent and renters should agree on the division of the bond before the agent submits a bond claim.

You can apply to the RTBA at the end of the tenancy to have all or part of the bond released with or without the Landlord's consent.

You can apply for your bond to be released before the end of the lease. If the Landlord agrees, the RTBA releases the bond 7 days before the end of the lease.

What if the Landlord wants to make a claim on the bond?

The Landlord has 14 days from when either you vacate the property or the Landlord becomes aware that the property is now vacant.

If the Landlord has not consented to the bond being paid out, the Landlord has 14 days to dispute it by making a claim on the bond. Usually, this is to claim you for damage or cleaning. The RTBA will notify you with an SMS and email, and you can challenge the Landlord's claim within 7 days.

If the renters do not respond to the link within 7 days, the Landlord and renters will receive a reminder. If no response is received in 14 days, the bond claim will be cancelled, and the RTBA will return the bond to the renters.

What are the allowable reasons for a bond claim?

Landlords can attempt bond claims for anything. However, a reasonable claim may be:

- damage caused to the property by the renters other than fair wear and tear;
- any goods stolen or not reported lost to the Landlord by the renters;
- the property being in an unclean condition, fair wear and tear excepted;
- abandonment of the property by the renter;
- an amount of rent that has accrued due and is unpaid.

My agent/landlord expects professional cleaning before I receive my bond back.

Tenancy agreements often contain clauses around steam cleaning or professional cleaning services. Renters are only required to hire professional cleaners if the Landlord had the property professionally cleaned immediately before you moved in, told you so, and provided a receipt. Otherwise, you can leave the property in a "reasonably clean" condition. The Landlord or agent cannot request you to do more than the law states, even if it is in the tenancy agreement.

You can refer to your copy of the condition report you received at the start of your tenancy.

What's considered "fair wear and tear"?

The normal deterioration of the house from it being lived in. Examples include faded curtains or carpet, scuffed floors from walking, chipped/cracked paint or loose hinges or handles.

Depreciation: Every fixed item in a house has a depreciation value. Some examples of fixed items are the cupboards, bench tops or cabinets. You can calculate annual depreciation by subtracting the 'salvage' value from its purchase price and dividing it by its useful life (the number of years it is used). As a rough guide, most fixed items over 10 years old have a depreciated value under \$100.

My agent/landlord is claiming part of my bond for damages. What can I do?

Landlords and agents often claim part or all of the bond for damages that can be considered fair wear and tear and often don't account for depreciation.

VCAT must consider fair wear and tear and the cabinet's depreciated value to decide whether any or all of the bonds should be refunded to the Landlord.

Further Resources

RTBA: 1300 137 164 rentalbonds.vic.gov.au

Evictions

Termination & Eviction

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

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

A Notice to Vacate (NTV) is a 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.

NTVs contain 12 fields that cover the renters' and landlords' details, the date at which the landlord/REA would like you to leave by ("termination date"), the 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 happens formally at VCAT.
- Informally, it can be done anytime. If you are sure your NTV is incorrect, wait until the final day of the notice period and email 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, such as asking for repairs or issuing a breach notice, VCAT will hear evidence.
- After the notice period expires, there will be a VCAT hearing for a Possession Order (see below). It is vital that 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 asked to make a decision. An example of when this might happen is during the COVID-19 eviction moratorium when NTVs were declared invalid, and 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. The landlord uses this order 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 consider this and may grant an additional tenancy period.

Warrant of Possession

The landlord purchases this from the Tribunal for \$174.90. They then have 30 days to deliver it to the local police station, which has 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 official police officers.

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 that you lose if you don't show up. ATTEND YOUR HEARING. RAHU can help you prepare for VCAT and give you some pointers about the process. If you don't show up, you lose.

Being prepared is essential. Evidence must be submitted in the days before the hearing, which helps 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 and put you in touch with a Tenancy Assistance and Advocacy Program (TAAP) provider to represent you at your hearing.

Notices To Vacate - What reasons can be provided?

- From March 29th, 2021, the Residential Tenancies Act Amendments (RTAA) will somewhat limit the reasons a landlord can end a tenancy.
- There are immediate NTVs for violence toward or "endangerment" of the landlord, their agents, contractors, neighbours, etc. in private tenancies and 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 order at the same hearing.

Rent Increases

What are my rights?

- Your landlord must give you 60 days notice of the proposed increase
- The proposed rent increase must be submitted to you via the standard form.
- The form must include the calculation method for the rent increase.
- If you believe the increase to be excessive, you have a right to challenge it
- You must challenge the increase **within 30 days of receiving the form**
- You can find out if the increase is excessive by comparing it to the rental market and Consumer Price Index (CPI)
- You can challenge the rent increase by ticking the box on the rent increase form, adding your contact number, and emailing this to renting@justice.vic.gov.au.

What counts as excessive?

As a union, we stand against the right for housing to be dictated and dependent on market forces. For renters stuck in the private market, the legislation defines 'excessive' by the rental market and its supply and demand.

Consumer Affairs Victoria states that the measurements used to calculate this are the current Consumer Price Index (CPI) or the Statewide Rent Index (SRI).

Due to the rental market shifting significantly, **if your landlord increases your rent by over 5% from what you're currently paying, you may want to challenge it.**

How do I tell whether a rental increase notice is valid?

Is my rent increase notice on the proper form?

Agents and Landlords must use a formal 3-page form titled "Notice of Proposed Rent Increase to Renter of rented premises". If they do not use this form, the notice is not valid. On this new form, you can tick a section at the end to challenge the rent increase.

How often can my rent be increased?

Your landlord cannot increase your rent more than once in 12 months.

Fixed term & periodic (month to month) leases: If your current lease started before 19th June 2019, your rent can only increase once every six months. If your lease started after 19th June 2019, it can only increase once every 12 months.

Have I been provided with enough notice of the proposed rent increase?

The start date of the proposed rent increase on the notice must be at least 61 days after the date the notice is given. For example, the earliest date the rent increase on a notice given on 29th March can take effect is 30th May.

What can I do if I receive an invalid proposed rent increase notice?

Can the notice be disregarded?

According to the *Residential Tenancies Act* (RTA), if a notice of proposed rent increase is invalid, it is void and has no legal effect.

How can I check if it's valid? If you are unsure, contact your RAHU branch or our Renters Rights Support Team.

What if I have complied with an invalid notice?

You may apply to VCAT for an Order under Section 452(1) of the Residential Tenancy Act to be refunded any extra rent you paid in compliance with a rental increase notice that was found to be invalid.

How can I challenge a rent increase?

If you think the proposed rent increase is excessive, tick the box in the form's 'Rent increase investigation' section, write your phone number in the space provided and email the notice to renting@justice.vic.gov.au. You must do this within 30 days after the notice is given.

What happens next?

A Residential Tenancies Inspector from Consumer Affairs Victoria (CAV) will contact you to arrange an inspection of the premises.

They can take into account:

- the current Rent Market Index for your area
- the conditions and standards of the property, i.e. if there are items in your lease that you've agreed to rent yet aren't working
- rent payable for similar properties currently in the area

Contact your local RAHU branch for support in your claim.

What happens following the inspection?

The Inspector must provide you and your agent/landlord with a written Rent Assessment Report. This report will take into account the rent payable for similar properties of a similar standard, style and size in the exact location; the state of repair and general condition of the property; and the number, amount and timing of any rent increases you've already received in the last 24 months. You have 30 days after receiving the Inspector's report to apply to VCAT for an order declaring the proposed rent to be excessive.

What if I couldn't apply to CAV within the 30-day deadline? Suppose you have reasonable grounds for not requesting CAV investigate the proposed rent increase within 30 days. In that case, you may still apply to VCAT for an order declaring the proposed rent excessive. Your application must be accompanied by a copy of the notice of rent increase and contain why you had not requested an inspection by CAV.

What can VCAT order?

If VCAT declares the rent or proposed rent excessive, then the landlord cannot increase the rent for 12 months, and they may also order the landlord to refund you any increased rent you've already paid.

Repairs

If something needs fixing, your Landlord must ensure it's repaired by someone qualified. The first step to get any repairs done is to tell your Landlord or agent what needs to be fixed. We suggest writing them an email so you have a record. Ideally, they will carry out the repairs quickly, but if not, you can ensure it's repaired.

Is it urgent?

The *Residential Tenancies Act (RTA)* gives a specific definition of urgent repairs as:

- a broken, malfunctioning or leaking water service, appliance or fitting that uses or supplies water;
- a roof leak; gas leak; electrical fault;
- a failure or breakdown of any essential service or appliance provided for hot water, water, cooking, heating and cooling or laundering;
- any fault or damage that makes the property unsafe or insecure, including pests; mould or damp **and** or safety devices, including smoke alarms or pool fences
- flooding or serious flood damage; serious storm or fire damage;

The Landlord must service an urgent repair within 48 hours after notice is given. If you have notified them of an urgent repair and they have not been carried out reasonably quickly, you have these options:

- Arrange the repair yourself at a cost of up to \$2500 and send a Notice to the Landlord requiring the Landlord to reimburse you within 7 days or
- Apply to VCAT for an urgent repair order by filling out a General Application form.

VCAT must hear your matter within 2 days.

Can I stop paying rent until they fix it?

There is no right under Victorian law to withhold rent no matter how badly the Landlord is acting. We're organising in Union to change that, which is why **it's essential to join RAHU**

Compensation

If you have increased costs due to the Landlord's failure to carry out a repair, you may be able to claim compensation for those costs. Some examples of the grounds for these claims could be:

- increased utility bills
- replacing damaged belongings
- payment for alternative accommodation
- a percentage of your rent for days the problem limited your use of the property.

You won't be entitled to compensation if you haven't notified the Landlord of the problem. If you have increased costs due to a repair, it is important to document them and keep receipts

If you are a member, contact our Renters Rights Support Team at organise@rahu.org.au to discuss what compensation you may be eligible for and help with your options.

What if it's a non-urgent repair?

- Notify the Landlord of the problem in writing.
- The Landlord has 14 days to complete the repairs.
- If they haven't completed the repairs within 14 days, you can request a Repairs Inspection from Consumer Affairs.
- Apply to VCAT for a non-urgent repairs order

What if I'm not sure whether it's urgent?

If unsure, contact your local RAHU Branch Delegate or learn more at Consumer Affairs.

Does the Landlord still have to fix it if...

- **An accident by a renter?** If the accident wasn't caused by faulty appliances or due to the property being in disrepair, you may want to get further info on Bond Claims and fair wear and tear.
- **The agent is ignoring my request?** Yes! The agent has a duty to report repairs to the Landlord, and the Landlord has a duty to keep the property in good repair.
- **It was broken when I moved in?** Yes! This includes broken things when you moved in or if the property is old and rundown. The agent or Landlord may have misled you, and
- **They say I have to pay for it?** You can't be expected to pay for repairs unless they result from damage you've caused. If they're insisting, contact your local RAHU branch for support.

Won't the Landlord just kick me out?

Landlords can't evict you without a valid reason and through the prescribed forms. The Landlord would have to prove it's true and convince VCAT it's reasonable to evict you in all the circumstances. If your Landlord does try to evict you and you are a RAHU member, you can contact us for support with your case at organise@rahu.org.au

Further Resources

- Consumer Affairs Victoria (consumer.vic.gov.au) for further info on repairs and the Notice To Landlord Of Rented Premises form