

Breach of Tenancy Policy

1. Policy

This policy sets out the circumstances which may lead to action in response to an alleged and proven breach of the rental agreement.

Uniting VicTas (Uniting) is committed to:

- the rights of renters
- provide safe and secure housing for eligible renters, and the community and Uniting representatives
- ensuring that the vacant possession of the property occurs in a timely manner
- complying with the [Residential Tenancies Act](#) (Vic) or [Residential Tenancy Act](#) (Tas), and other other legislative, regulatory and contractual obligations.

Depending on the jurisdiction, in this policy:

In this document		Victoria	Tasmania
Renter	shall mean	Renter	Tenant
Rental agreement	Shall mean	Rental agreement	Tenancy agreement
Relevant tribunal	shall mean	Victorian Civil Administration Tribunal (VCAT)	Residential Tenancy Commission (RTC)
Act	Shall mean	Residential Tenancies Act	Residential Tenancy Act

2. Scope

This information applies to properties owned and managed by Uniting.

3. Procedure

If renters do not comply with their obligations which are set out in the rental agreement, Uniting may use a range of measures, including legislated measures, to achieve compliance with obligations.

At all stages of managing an alleged breach, Uniting representatives will:

- enable the rights of the renter, and additionally consider the Charter of Human Rights and Responsibilities Act 2006 in Victoria
- refer renters to appropriate advocacy services
- act in compliance with the requirements of the Act

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- ensure information and advice about regulations, requirements and procedures are understandable and accurate
- make evidence-based decisions
- consider mitigating circumstances
- be proportionate and responsive to risk and potential and required impact
- be consistent and fair, and work with stakeholders promote outcomes.
- be trauma informed, and not further disadvantage victim-survivors of family violence
- align with [MARAM Framework](#) in Victoria, or the [Family Violence Act 2004 \(Tas\)](#) for sharing information related to the objectives of the Framework or Act.

3.1. Types of tenancy breach

Tenancy breaches may occur in relation to:

- overdue rent
- intentionally or recklessly causing serious damage to the property
- threatening or intimidating behaviour to Uniting or its agents
- using, or allowing others to use the property for an illegal purpose
- assigning or subletting the property without approval

3.2. Respond to allegations of a breach of the rental agreement

Uniting representatives will:

- attempt to discuss the alleged breach with the renter, if it is safe to do so
- **NOT** initiate any action related to a renter’s engagement in illegal activities unless:
 - the property has been used to conduct that activity, and
 - it is substantiated by information and evidence obtained from the police
- identify additional supports that may help sustain the tenancy
- refer criminal matters to the police
- maintain complete and accurate records in the renter’s file

3.3. Investigate a breach of the rental agreement

Uniting representatives will:

- in consultation with the Team Leader, investigate alleged tenancy breaches as soon as practicable before determining what action to take
- undertake investigative activities, which may include but are not limited to:
 - talking to neighbours or other witnesses to the alleged breach, if relevant
 - contacting the renter’s or household’s support worker
 - reviewing the renter’s or household’s client files and tenancy information. This may identify a pattern of behaviour that requires support or intervention to help sustain the tenancy, and/or talking to police or local council if they are involved with the alleged breaches

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- seeking information about the renter's and household's circumstances (for example, children in the household), and how they may be affected by an action
- record evidence and maintain complete and accurate records in the renter's file

3.4. Communicate with the parties to the alleged breach

Uniting representatives will:

- notify the renter, either in writing or verbally, of:
 - the nature of the alleged breach
 - the action that Uniting may take if the alleged breaches are found to be true
 - the relevant legislation that applies to the situation
 - matters that will be considered when determining what action to take
- explain the process for responding to alleged breaches
- provide the renter a reasonable time to respond to the alleged breaches
- record evidence and maintain complete and accurate records in the renter's file
- provide the renter with a copy of the evidence on request, or a summary of evidence that does not breach privacy legislation or pose a risk to others
- keep other parties informed of progress of the matter
- consider the evidence, severity and nature of the substantiated breaches, and the human rights impact assessment in reaching a decision
- notify the renter of the outcome of the investigation
- commence the decided action.

3.5. Actions when a breach is proven

Actions taken in response to proven breaches must be lawful, evidenced, proportionate and fair.

Uniting representatives will:

- consult the line manager before taking action
- seek legal advice, as required
- maintain complete and accurate records
- refer to the process of the relevant tribunal to effect the appropriate regulatory activity (refer to Table 1 Victoria and Table 2 Tasmania)

Table 1 Victoria

Regulatory activity	Note
Breach of duty notice	Issue when a complaint has been substantiated and a breach of the RTA has occurred. The notice provides a timeframe for the renter to rectify any breach. If the breach is not addressed, Uniting can apply to VCAT for a compliance or compensation order. If a renter has breached the same duty provision three times, Uniting may issue a Notice to Vacate (NTV) on the third breach of that duty.

Regulatory activity	Note
Compliance or compensation order	When a breach notice is not complied with, Uniting will make an application to VCAT for a compliance order (on approval of the Senior Manager Housing Services).
Notice to Vacate	Issue an immediate notice for failure to comply with a VCAT Compliance Order – the renter has unreasonably refused to do what the Compliance Order states. Notices that are not complied with may result in Uniting seeking a Possession Order from VCAT
Immediate Notice to Vacate	Malicious damage to the property or the common areas. Endangering the safety of occupiers of neighbouring premises
14-day Notice to Vacate	Using or permitting their property to be used for any purpose that is illegal at common law or under an Act Engagement in drug-related conduct
Order for Possession	Apply to VCAT for a possession order when a resident gets a notice to vacate but does not move out on the date they are supposed to. The possession order will usually be made at a possession hearing.
Warrant of Possession	Apply to VCAT for a warrant of possession if the renter does not leave by the date in the possession order. A warrant of possession allows the police to evict a renter forcibly from the property. Apply for the warrant: immediately, if the possession order allows for it, or within six months after the date of the order, if the renter does not comply with it.
Eviction	Only Victoria Police can carry out a forcible eviction and only when they are acting on a warrant of possession granted by VCAT.

Table 2 Tasmania

Regulatory activity	Note
Notice to Vacate	<p>1. TENANT BREACHES THE LEASE AGREEMENT Minimum Notice: 14 clear days A tenant has 14 days to comply with the lease agreement (remedy the breach). If the tenant complies then the Notice ceases to have effect.</p> <p>2. FAILURE TO PAY RENT Minimum Notice: 14 clear days Issue A Notice to Vacate can be issued when the rent is in arrears. On the first or second notice within a twelve month period, if the full arrears are paid before the date the Notice takes effect then the notice ceases to have effect. When a third Notice to Vacate is issued in a twelve month period for rent in arrears, the landlord/agent may require the tenant to vacate even if the arrears is paid. NOTE: The tenant must be</p>

Regulatory activity	Note
	<p>served three valid Notices to Vacate within the 12-month period, not simply notified that their rent is in arrears.</p> <p>3. END OF THE FIXED TERM TENANCY Minimum Notice: 42 clear days The landlord must serve the tenant with the Notice before the end of their fixed term lease, and give 42 clear days notice. The 42 days can extend past the original end date of the fixed term. The Notice to Vacate cannot be issued sooner than 60 days before the end of the fixed term lease. Tenants not receiving a Notice to Vacate will immediately rollover to a non-fixed term lease following the end date of the lease.</p> <p>4. THE PREMISES HAVE BEEN REPOSSESSED Minimum Notice: 60 clear days Once the mortgagee has taken possession they are legally entitled to give 60 clear days notice even if a tenant has a fixed term lease.</p> <p>5. SALE, SIGNIFICANT RENOVATION, CHANGE OF USE Minimum Notice: 42 clear days A tenant on a fixed term lease cannot be evicted using sale, significant renovation, change of use or owner’s family use of premises as a reason. A tenant on a NON-FIXED term lease can be given 42 days to leave the property if it is to be sold (not just an intention to sell), if it is being renovated (major or structural and would make the property uninhabitable) or the use of the premises is changing (no longer a rental property)</p> <p>6. SUBSTANTIAL NUISANCE AT THE PREMISES Minimum Notice: 14 clear days BUT can be immediate if through Court A landlord/agent can issue a Notice to Vacate if a tenant causes substantial nuisance. This could be one large nuisance, such as an out-of-control party, or ongoing nuisance, such as noise pollution from a stereo.</p> <p>7. HOUSING TASMANIA and COMMUNITY HOUSING PROVIDERS Minimum Notice: Varies from 14 to 90 clear days There are four additional reasons to evict tenants who live in public or community housing properties (with notice periods in brackets):</p> <ul style="list-style-type: none"> • Exceeding income and asset thresholds (90 clear days). • Not requiring all bedrooms in a 4 bedroom property and alternative premises are offered (28 clear days) • Not requiring special facilities in a modified premises and alternative premises are offered (28 clear days). • Being away from the premises for more than 8 weeks continuously without approval (14 clear days).

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Regulatory activity	Note
	Eviction must not result in unreasonable financial or social disadvantage to the tenant.
Order of termination	Apply to the court for immediate termination of an agreement if the other party to the agreement: <ul style="list-style-type: none"> causes, permits or is likely to cause damage to the premises or neighbouring premises, or causes or is likely to cause physical injury to them or occupants of neighbouring premises
Order for Vacant Possession	Apply to the Magistrates Court for an Order for Vacant Possession. Serve a copy of the application on the tenant. The application will state where and when the application will be heard.
Eviction	If the tenant is still in the premises after the date set down by the judge, a Bailiff will enter the premises to evict the tenant and change the locks. It is illegal for a landlord or agent to change the locks without a Court order.

4. Legislation/Regulations

National

Age Discrimination Act 2004 (Cth)

Disability Discrimination Act 1992 (Cth)

Sex Discrimination Act 1984 (Cth)

National Rental Affordability Scheme Act 2008 (Cth)

National Rental Affordability Scheme Regulations 2020 (Cth)

Tasmania

Community Housing Providers National Law (Tasmania) Act 2013 (Tas)

Family Violence Act 2004 (Tas)

Victoria

Housing Act 1983 (Vic)

Residential Tenancies Act 1997 (Vic)

Residential Tenancies Regulations 2021 (Vic)

Equal Opportunity Act 2010 (Vic)

Public Health and Wellbeing Act 2008 (Vic)

Public Health and Wellbeing (Prescribed Accommodation) Regulations 2020 (Vic)

Noise (Residential) Accommodation Services

Environment Protection (Residential Noise) Regulations 2018 (Vic)

Environment Protection Act 2017 (Vic)

Environment Protection Regulations 2021 (Vic)

Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM)

Charter of Human Rights

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5. Related Documents

Relief Due to Hardship Policy
Eligibility and Allocations Policy
Rent Policy
Rent Arrears Policy
Changing Needs Policy
Uniting Asset Management Policy

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