

Residents Have Rights

Students in Rooming House
Accommodation



Tenants Union of Victoria





Tenants Union of Victoria

We are based at 55 Johnston Street in Fitzroy

We provide advice via phone, email and in person through our drop in service

We can also give organisations who support residents advice if your call our admin number on 9411 1444

TUV Fact Sheets

➡ <http://www.tuv.org.au/publications/fact+sheets>

➡ They come in 12 different languages

Avoiding eviction for rent arrears

If you do not pay your rent on the day that it is due, you will be 'in arrears'. If you are 14 days in arrears, your landlord can give you a 14-day Notice to Vacate. However, they can only give you the notice for rent that is actually overdue. They cannot give you a Notice to Vacate for not paying your rent in advance.

If you are in arrears, and you are unable to make a payment, contact your landlord or real estate agent as soon as possible and tell them when you will be paying. If you can't pay the arrears in one payment, you should offer to pay them off over time (eg an extra \$20 per week). Don't offer to pay more than you can afford. Make the offer in writing and keep a copy—even if the landlord or agent don't accept your offer, you can use your letter as evidence that you tried to resolve the problem.

❗ It is illegal for your landlord or agent to personally attempt to evict you. Only the police can evict you and even then, they must have a valid Possession Order and a Warrant of Possession from the Victorian Civil and Administrative Tribunal. (See the *Eviction and Complaints about landlords and real estate agents* fact sheets for more information.)

If you need help to make a payment plan you can either talk to a financial counsellor over the phone by calling Money Help on ☎ 1800 149 689, or if you want a face-to-face appointment you can phone Consumer Affairs Victoria on ☎ 1300 55 81 81 for the number of the nearest financial counsellor.

If the landlord or agent rejects your offer or you are unable to make any payments, the landlord must follow one of the legal procedures below if they want to evict you: the standard procedure below or the alternative procedure overleaf.

Standard eviction procedure

Step 1. 14-day Notice to Vacate

As mentioned, if you are 14 days or more in rent arrears, the landlord can give you a 14-day Notice to Vacate. This notice must be hand delivered or sent to you by registered mail.

❗ If you are not 14 days in rent arrears at the time of receiving the notice, it is invalid.

If you receive a Notice to Vacate, you do not have to move out of the property if you don't want to. The notice is just the first step in taking the matter to the Victorian Civil and Administrative Tribunal. It is not too late to try and negotiate a payment plan with the landlord or agent.

❗ If you want the Tenants Union to help you prepare for a Tribunal hearing, seek our advice as soon as you receive the Notice to Vacate.

Step 2. Application & Notice of Hearing

The landlord must give you a Notice to Vacate **before** they apply to the Victorian Civil and Administrative Tribunal for a Possession Order. Otherwise their application is invalid and should be dismissed. You should receive a copy of the landlord's application to the Tribunal.

Once they have received the landlord's application, the Tribunal will set a hearing date. They will send you a Notice of Hearing, which tells you the time, date and place of the hearing. **If you want to avoid being evicted, you must go to the hearing**, even if you have paid the rent arrears or entered into a payment agreement with your landlord or agent. If you don't go to the hearing, the Tribunal may grant the landlord a Possession Order.

❗ If your landlord or agent tell you that you do not need to go to the hearing because you have paid off the rent arrears or for any other reason, **it is very important that you phone the Tribunal on ☎ 9628 9800 to ask if the application has been withdrawn**. If it hasn't, then you must go to the hearing if you want to avoid eviction.

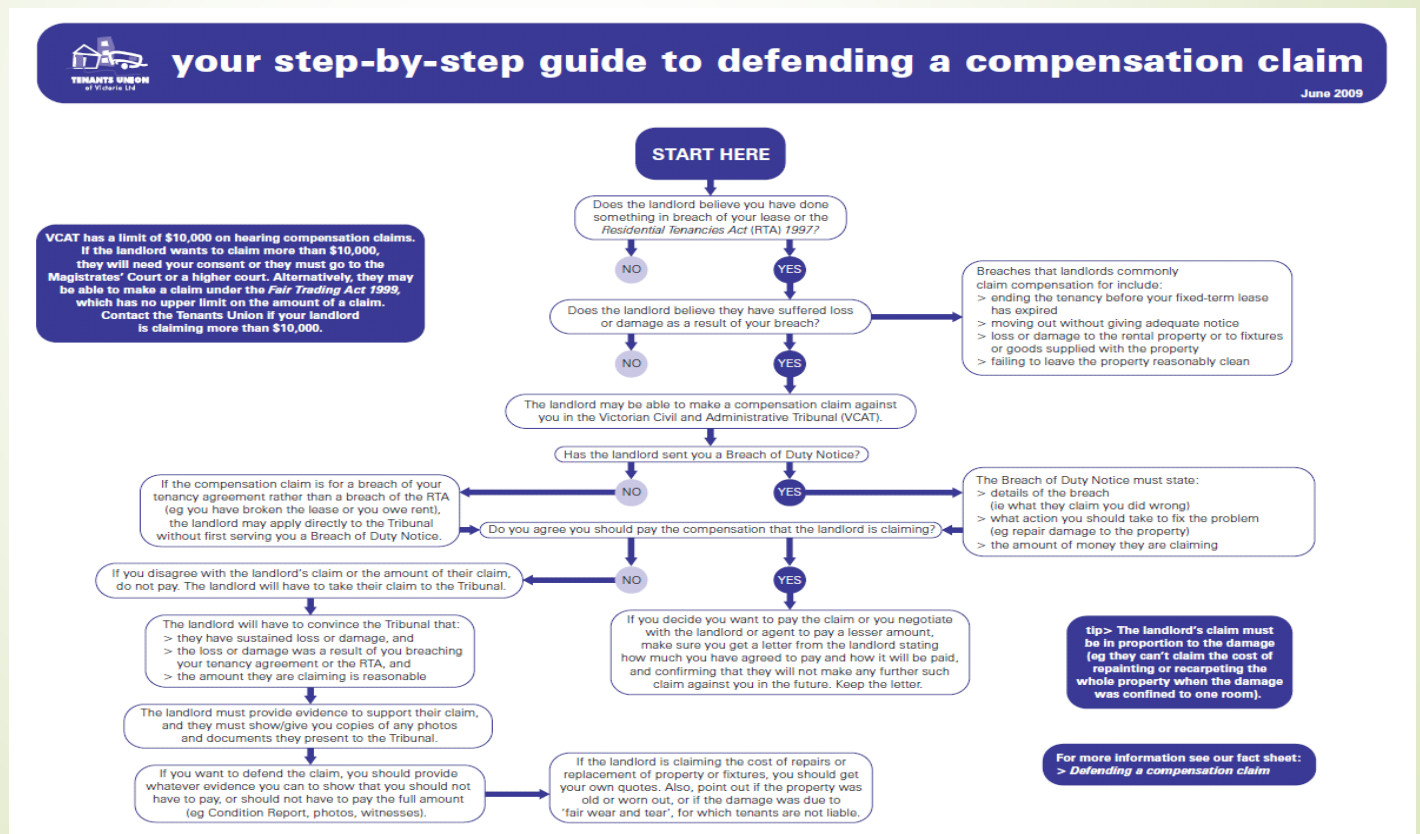
If you cannot go to the hearing, you will need to apply for an adjournment at least 2 days before the hearing date. See the *Victorian Civil and Administrative Tribunal* fact sheet or contact the Tenants Union for advice.

continued overleaf...



Flow Charts

➡ <http://www.tuv.org.au/publications/step-by-step+guides>



SUBSTANTIVE LAW

Under the Residential
Tenancies Act 1997





Relevant Legislation

- Residential Tenancies Act 1997 (Vic)
- Residential Tenancies (Rooming House Standards) Regulations 2012 (Vic) = [“Minimum Standards”]
- Public Health and Wellbeing Regulations 2009 (Vic)
- Building Code of Australia
- Consumer Law:
Commonwealth: Competition and Consumer Act 2010
&
Vic: Australian Consumer Law and Fair Trading Act 2012



What we do

- The outreach team at the Tenant's Union comprises of myself and my legal colleague Jenny Sharp (Jenny also has a background in building and is a highly valued asset)
- We are funded to visit Rooming Houses 2 days per week
- We visit Rooming Houses across the North West Melbourne metropolitan area
- In the last financial year, we conducted 335 visits to 249 different properties.
- We receive referrals from wide-ranging sources including:
 - Tenant's Union Telephone Advice Line
 - Consumer Affairs Telephone Advice Line
 - University Student Services
 - Community Health Services
 - Housing Support Services



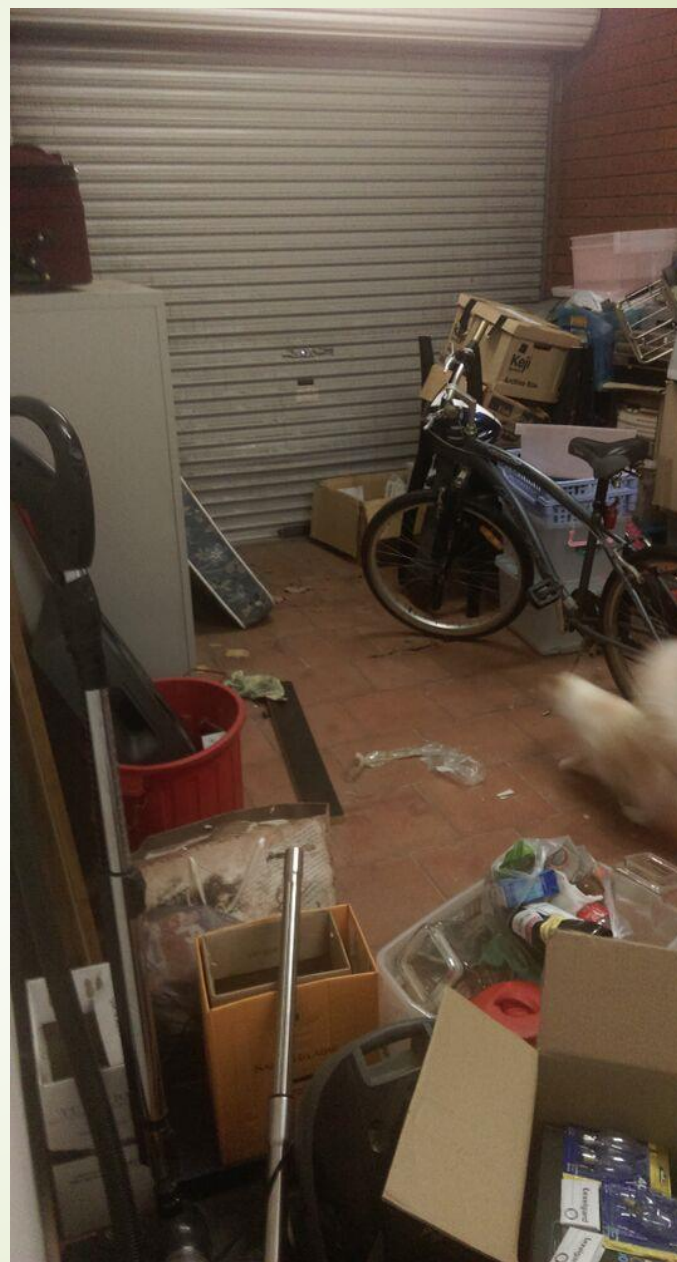
What is a Rooming House?

The RT Act defines a rooming house as:

“**rooming house** means a building in which there is one or more rooms available for occupancy on payment of rent—
in which the total number of people who may occupy those rooms is not less than 4

What does a Rooming House look like ?





Rooming House Registration

- Even though a rooming house should be registered, frequently they are not. This does NOT preclude them from falling within the legal definition of a Rooming House
- Rooming Houses MUST be registered with their local council. Public Health and Wellbeing Act (PHWBA) s67
- It is possible to check if a property is a registered Rooming House on the CAV Public Register. If you cannot locate a property on the register, it is worth contacting the Environmental Health Department of the relevant council.
- <http://www.consumer.vic.gov.au/housing-and-accommodation/renting/applying-for-a-rental-property-or-room/types-of-rental-agreements/public-register-of-rooming-houses>



Is it a Rooming House or a Residential Tenancy ?

- It's rarely straightforward!
- Is there capacity for 4 or more people?
- Does each resident have a separate agreement/arrangement?
- Who does the resident pay rent to?
- Is there shared common area/facilities?
- Are there house rules?
- Does the resident have “exclusive possession” or only “exclusive occupancy”?
- Are there locks on each door?
- Rooming House Operator may sometimes live in the property
- Does the Operator have access to the common areas?




Finding Accommodation

- International Students often make accommodation arrangements before arriving in Australia
- Vast array of accommodation providers
 - Yeeyi.com, gumtree, flatmates.com.au, University student services, education agents, word of mouth
- Unregulated
- TUV has very limited contact with students prior to arriving in Australia
- This is concerning and warrants further research and education



What Should Students Do ?

- Keep receipts for bond, rent, payment of utilities.
- Keep all email and SMS correspondence
- Keep copies of advertising promoting the property they occupy (screen shots, photocopies etc)
- Take photos of room prior to occupation
 - With particular focus on any faults (repairs, failure to clean)
- Take photos again after vacating the premises



Taking a Matter to the Victorian Civil Administrative Tribunal

- Many international students fear reprisal
- Students need to be reassured that the VCAT process is a civil one
- The process has no connection with the Department of Immigration
- If students/residents have any concerns about their visa, they should seek further advice from a registered migration agent

Agreements

- Can be verbal or written
- Fixed Term or Periodic (significant repercussions for rights – resident may become a tenant!)
- Contain details about bond payment and amount
- Rent payment date and method
- Terms and Conditions
- Where there is any written agreement in what might be a rooming house, residents should seek further advice at the Tenant's Union Drop In Service. 55 Johnston St Fitzroy.
- Standard Form Residency Agreement available on CAV website:

<http://www.consumer.vic.gov.au/resources-and-education/forms-and-publications>

Bonds

- The bond **must** be lodged with the Residential Tenancies Bond Authority (RTBA) s406
- Bond amount **must not** be more than equal to 14 days rent s 96 RTBA
 - It is an offence not to lodge bond – residents can easily check if the bond is lodged by contacting the RTBA on PH: 1300 137 164
- Residents can report a failure to lodge the bond to Consumer Affairs Victoria (CAV)
- Two ways for the bond to be claimed:
 - Consensual parties sign the bond claim form
 - Parties can apply to VCAT (resident applies under s416). This is a free application



House Rules

- ▶ Section 126 allows Rooming House Operators to create house rules
- ▶ Must be displayed and must be fair and reasonable
- ▶ 7 days notice required for change of rules
- ▶ Residents can challenge the rules through VCAT if they believe the rules are unreasonable



Utility Charges



- Residents are often illegally charged additional fees for utilities
- Section 108: residents are only liable for utility charges if their room is separately metered



Shared Room Rights



Shared room right section 92B

A shared room right gives a resident a right to occupy the room together with one or more other residents chosen by the rooming house owner.

Example : A resident takes up occupancy of a room after being given notice under section 92C that the resident is to have a shared room right. Later that week, without notice to the existing resident, another resident takes up occupancy of the same room under a residency agreement. Each resident has a shared room right.



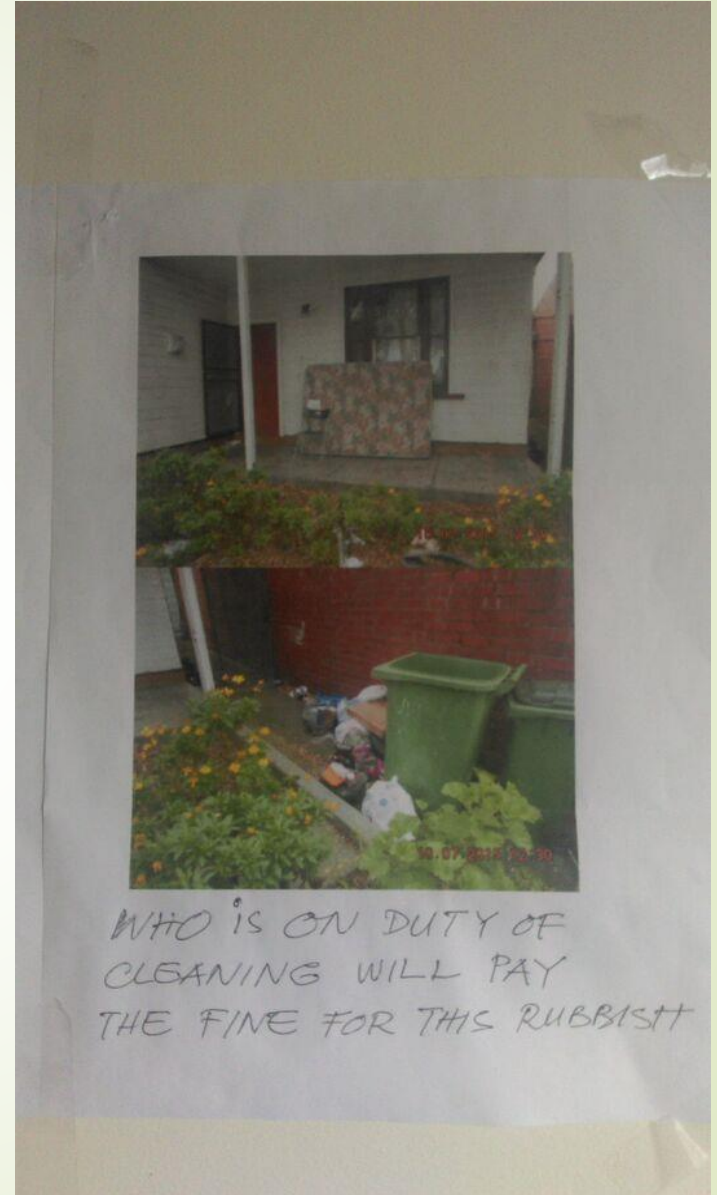
Cleaning





Who is responsible for Cleaning?

- Rooming House Operator is required to maintain the communal areas in a reasonably clean condition (RTA s120, PHWB s18)
- A Resident must keep the room clean and in a condition which will not create a fire or health hazard (s114 RTA)
- Rooming House Operator's often compel residents to do all the cleaning –threat of additional penalties if no compliance
- Breaches of the RTA or PHWA can be anonymously reported to CAV and local council





Repairs



Types of Repair

- **Urgent Repair**

- eg Broken stove, no hot water, heater not working, safety issues (electrical)
- Can apply to VCAT for urgent repair. Should be listed within 2 working days.

- **Non Urgent Repair**

- Everything else
- Can issue a Notice to Rooming House Operator. Allows 14 days for the Rooming House Operator to address the repair
- Can request CAV attend to do a repairs inspection and after obtaining report, residents can apply to VCAT for an order that repairs be done
- Many repairs issues can also be reported to CAV and local council



Rooming House Operator has a duty to maintain premises in good repair

- **S120** Not in good repair
- Many Rooming Houses (registered and unregistered) are in appalling condition. Residents will often make verbal requests for repair. This is often not successful
- TUV advise residents to **make repairs requests in writing** – via email, SMS. Where this is unsuccessful, residents are advised to issue a Breach of Duty Notice
- Written documentation and photographs are very helpful should residents wish to seek compensation at a later date.




Breach of Duty

- Notice for breach of duty to owner of rooming house
- <http://www.consumer.vic.gov.au/resources-and-education/forms-and-publications>
- Very useful to formalize complaints – must be a duty provision. Must be issued prior to claim for compensation
- The issues relate to breaches of the “duty” provisions under the Act ss 110-128 (except s111) and also s140 for rooming houses



Residents Can Claim Compensation

- If you are in the property at the time of making the claim, a breach of duty notice must be given first (attach evidence and details of the claim)
- If the tenancy has been terminated, you can apply simply under:
S452/472 Application to Tribunal for compensation order
- 6 year limitation period from the date of the incident



What can your client claim under Tenancy Law

- Breaches of quiet enjoyment- ie. landlord doesn't provide 24 hours notice prior to entering a resident's room etc.
- Loss of amenity-i.e. broken stove, flooded bedroom, broken light etc.
- Damage to goods (in limited circumstances –market value, not replacement value).
- Inconvenience- up to \$1000. *EA v EL*(Residential 'Tenancies')[2006] VCAT 2049.
- Utility bills.
- Over paid rent.



What do they need to do?

- Serve the landlord with a breach of duty notice first and then apply to VCAT after 3 days.
- Seek a percentage of their daily rent based on the impact it has had on their ability to use property.
- There are no set percentages but by way of example, Peeling paint might be 1-2% whereas a fire damaging the entire property would be 100% if the property is uninhabitable.
- Resident needs to be able to justify the amount they are seeking (be fair and reasonable).



your step-by-step guide to 'claiming compensation'

June 2009

START HERE

Have you suffered any loss, damage to your goods and/or inconvenience because of your landlord's or agent's actions or their failure to act?

for example...

- > the landlord failed to carry out repairs you requested
- > the landlord tried to evict you illegally
- > the agent or landlord has been turning up with prospective tenants or buyers without giving you 24 hours notice or getting your consent

YES

You may be entitled to claim compensation.

Are you claiming more than \$10,000?

If you are making a claim because your landlord failed to carry out repairs, wait until the repairs are done or until you move out so you know how much compensation to claim.

To claim compensation, you need to serve the landlord with a Breach of Duty Notice (available from the Tenants Union or Consumer Affairs Victoria).

When you fill out the Breach of Duty Notice you must include:

- > details of the landlord's breach (ie what they did wrong)
- > what action they should take to fix the problem (eg fix the roof)
- > the amount you are claiming for any money you spent as a result of the problem and/or any loss or inconvenience you were caused
- > the amount you are claiming for any goods that were damaged and cannot be repaired

Give a copy of the Breach of Duty Notice to the landlord or agent and keep a copy for yourself. Send it by registered mail (keep the mail receipt) or deliver it in person.

Have you received the compensation payment within 14 days (or 16 days if you delivered it by mail)?

NO

YES

At the hearing, you will need to provide proof to support your claim. This could be in the form of photographs, witnesses, letters to your landlord/agent, receipts for expenses, quotes for repairs etc.

You can apply to the Victorian Civil and Administrative Tribunal. Fill in an application form and attach a copy of the Breach of Duty Notice that you sent.

As soon as you receive notice of the Tribunal hearing, contact the Tenants Union for advice.

For more information see the following fact sheets:

- > Claiming compensation
- > Breach of Duty notices
- > The Victorian Civil & Administrative Tribunal
- > Repairs

You cannot claim compensation under the *Residential Tenancies Act 1997* for pain and suffering, physical injury or death. These claims must be made in the courts. Contact your nearest Community Legal Centre for advice.

Compensation claims can be made up to 6 years after the loss, damage or inconvenience occurred.

The *Residential Tenancies Act 1997* has a \$10,000 compensation claim limit. However, you may be able to claim under the *Fair Trading Act 1999*. Contact the Tenants Union for advice.



Lease Breaking Costs

- Where there is some form of fixed term agreement in a Rooming House, there may be costs for lease breaking
- However this depends on the contractual terms and will warrant more detailed advice.
- When a rooming house resident has signed a fixed term agreement and wishes leave earlier than the agreed terms, please advise the client to see further advice from the Tenant's Union Drop In Service.
- Mon-Fri 55 Johnston St Fitzroy



Rent Arrears

- If the resident owes 7 days or more rent the Rooming House Operator may give them a 2 day Notice to Vacate. [s281] Where a Resident has been issued with a NTV for Rent Arrears, please seek further advice immediately as there is serious risk of eviction.
- Note: paying off the arrears within the 2 day period does not make the NTV unenforceable.
- After the notice has been given the RHO should apply to the Tribunal for a Possession Order if they wish to terminate the tenancy.
- Normally it takes approximately two weeks from the date of application for the matter to be heard

What can your client do?

- If the Resident can pay off rent owing within a reasonable time frame and continue to pay the rent, then they can ask that the tribunal member does not make a Possession Order at the Hearing and that they be given an opportunity to enter a payment plan (this may be written in the Tribunal Order)
- Residents **must** attend the Possession Order Hearing to ask for this. If residents enter into a payment plan (to avoid eviction) they need to honour this plan, otherwise risk further VCAT hearing and possible eviction.
- Is there a fault in the notice? Has it been served correctly, have they given enough days notice? If unsure contact TUV.

Questions?

