

Notices to vacate

A 'notice to vacate' is the first step for a landlord wanting to end a lease and evict you.

Getting one does not mean you must move out by the termination date in the notice. If you want to stay and do not leave the rental, the lease continues.

The landlord (officially called the rental provider) must apply to VCAT, the Victorian Civil and Administrative Tribunal, for a 'possession order'. If the landlord does not follow the correct legal steps, eviction is not legal. Even if they follow the steps, you can still tell VCAT why you should not be evicted at the hearing about the possession order.

VCAT can mediate agreements between you and the landlord, refuse the eviction, or agree to the eviction, and in that case may grant more time before you must leave.

Always get legal advice early about disputing a notice to vacate.

Types of notices to vacate

There are two main categories of notices.

Fault-based notices to vacate, where the landlord says the renter has done something wrong: Landlords can issue these notices at any time if they believe you have broken specific rental laws or obligations. The minimum notice period before the termination date ranges from immediate notice up to 28 days, depending on the reason.

No-fault notices to vacate because the landlord wants to do something with the property: These notices must set the termination date after your fixed-term lease ends. Most require a 60-day notice.

Banks and other lenders can give a 60-day notice to vacate if the landlord misses mortgage payments. Seek legal advice if the bank contacts you.

Notices must be 'valid'

A notice to vacate must be legally 'valid' for the VCAT to consider if the landlord can get the property back. If not, VCAT must refuse the landlord's request.

A valid notice must meet these conditions:

- ✓ Be on the correct [notice to vacate form](#) from Consumer Affairs Victoria
- ✓ Be addressed to you
- ✓ Be signed and dated by the landlord or agent
- ✓ Be a valid reason under Victorian rental laws, the Residential Tenancies Act 1997
- ✓ Clearly state the reason in sufficient detail
- ✓ Include any required documentary evidence which must be attached to the notice to vacate – the list of those documents is on the [Consumer Affairs Victoria](#) website
- ✓ State a 'termination date', which is after the minimum notice period for that type of notice to vacate

Leaving in response to a notice to vacate

If you have received a no-fault notice to vacate and want to leave before the termination date, you can usually give a 14-day notice, even if this is before your fixed term lease ends. Otherwise, for all notices to vacate you can leave on or after the termination date in the notice. For more information see our website page about ending your lease.

Eviction process at VCAT

Landlords must prove their case if they take you to VCAT, which does not permit eviction without a valid reason. See the reasons for each type

of notice to vacate on our website's [notice to vacate](#) page.

The landlord can ask VCAT for a possession order any time after giving a notice, but the hearing about the issue must be after the notice's termination date. The landlord must give you a copy of their application, and VCAT will inform you of the hearing date.

Attend the hearing to explain your side or to ask for more time before you leave. If you do not attend, VCAT can still give the landlord a possession order.

At the hearing VCAT looks at whether the notice is valid and can only end your lease if it is 'reasonable and proportionate' to do so. Factors include the impact of the decision: your hardship if you are evicted and the landlord's hardship if they do not get the property back.

If VCAT does make a possession order, you can ask VCAT to delay the order or the eviction date. For this to happen you must prove severe hardship. You are responsible for rent until you leave.

Only the police can enforce a possession order. It is illegal for the landlord to evict you.

Challenging notices at VCAT

In response to using your rights as a renter: If the landlord gives you a notice to vacate on the basis that your initial fixed term lease is ending, or on the basis that you threatened them, their agent or contractors, this notice cannot be enforced if you can show it was in response to you trying to use your rights, such as asking for repairs.

Rent arrears: The landlord can give you a notice to vacate if you are more than 14 days in rent arrears. If the landlord applies to VCAT to evict you, you can ask for a payment plan at the hearing. You must show you can pay your regular rent and catch up on what you owe over time. You must also not have got more than 4 notices for rent arrears in the 12 months since the lease began, or in subsequent 12-month

periods. For more information see our website's [overdue rent](#) page.

Family violence: You can ask VCAT to dismiss most fault-based notices if the landlord issued them because of the conduct of a person who has been committing personal or family violence against you. Apply to VCAT within 30 days of receiving the notice. Also get legal help promptly.

Tenancy databases

You will not be listed on a tenancy database if you receive a notice to vacate or if the issue escalates to VCAT.

You can only be listed if a possession order is made for certain reasons, including serious damage, subletting without the landlord's consent, and rent arrears.

For more information, visit our website's [tenant databases](#) page.

Getting help

Get help as soon as possible about whether you can dispute a notice to vacate, from Tenants Victoria, community legal centre, Tenancy Assistance and Advocacy Program (TAAP) service for private renters, or Tenancy Plus service for social housing renters.

Useful links

Tenants Victoria:
www.tenantsvic.org.au

Federation of Community Legal Centres:
www.fclc.org.au

Consumer Affairs Victoria:
www.consumer.vic.gov.au

Tenancy Plus
www.housing.vic.gov.au/tenancy-plus-support-program

This information is a guide and should not be used as a substitute for professional legal advice.