

VCAT Process overview

The Residential Tenancies Act 1997 (Vic)

The RTA is the legislation that governs tenancies. Any issues between renters and rental providers are handled in line with these laws. Importantly, it sets out the procedure for resolving disputes at VCAT. Renters cannot take other renters to VCAT for issues, only rental providers (like WHL) can do this. The RTA & VCAT does not punish criminal action – the police/courts are the only ones with jurisdiction over this.

Breach Notices

A breach notice can be issued in certain situations when a renter or rental provider has not upheld their obligations under the RTA. A breach notice must relate to a specific incident that contravenes the RTA. For instance, if a renter plays loud music during the night neighbours are unable to sleep, the details of a breach notice may look like this:

On 4th January 2022, you or your visitors played unreasonably loud music that began at 9pm and finished at 4am. The music played at a volume that was audible from inside the adjacent neighbours' bedroom. Several complaints indicate that police were contacted and arrived at 4:30am. This impacted the neighbours' ability to sleep, which has caused them significant interruption to their lives. This has impacted their wellbeing and infringes their rights to peaceful occupancy. We require you to remedy this breach by no longer creating unreasonable noise disturbances that interfere with the neighbours' peace.

Note that the details must be specific, contain a date and time, explained the impact on others and provided an opportunity to remedy. We need to hear about breaches as they occur, or as soon as reasonably possible. It is also advisable to maintain a running list in a notebook or your phone to keep a timeline.

Evidence

It is impossible to get a Possession Order without showing VCAT evidence of the breach. Evidence can be videos, photos, or most importantly – witnesses.

Without witnesses, WHL cannot get a Compliance Order or Possession Order (we have never been successful). This is because the Tenancy Officer can only share secondhand information, whereas a witness can give a first-hand experience.

If there is no documentary evidence (photos, videos, etc.), the Member will wish to speak with any person who personally witnessed the incident. This enables them to cross-examine and determine if the evidence is acceptable.

Written evidence can be submitted by way of Statutory Declaration. To do this, I suggest that you firstly create your written document and initial each page. Then, fill in the Statutory Declaration form and state that the attached evidence document is a true and honest recount of information pertaining to the VCAT matter of Women's Housing Ltd v X (we will provide her full name once application is public). The wording is flexible – so long as you reference the document

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Once you complete this, send it through to Rose who will submit it alongside the rest of the evidence to VCAT. Here is a link to the VCAT site with more info about stat decs and how they can be completed:

<https://www.justice.vic.gov.au/statdecs>

Ending Tenancies

The follow steps will be the most direct route for WHL to take when addressing these issues.

1. Renter breaches
2. WHL send a Breach Notice
3. Renter breaches again (after 7 days)
4. WHL apply for a Compliance Order
5. Renter breaches again
6. WHL send a Notice to Vacate
7. Renter does not leave property → WHL applies for a Possession Order
8. Renter does not leave property → WHL applies for a Warrant of Possession
9. WHL evicts renter

Please note that VCAT are experiencing significant backlogs and there may be a number of weeks between applications and scheduled hearings.

Renters have very strong rights when it comes to living in their properties. Ending a tenancy at VCAT is extremely difficult as the Member will ensure all legal and human rights of the renter are upheld.

The Member will consider:

- The quality of evidence
- The impact eviction will have on the renter
- If it is reasonable and proportionate to evict the renter
- If there is another way to solve the problem
- If the renter caused the issues because of an underlying mental illness
- How serious the breach is
- If the behaviour is caused by a person other than the renter and if this person can be excluded from the property

If VCAT make a decision to dismiss the case, WHL must start the process from the beginning again

Reasonable and Proportionate

The Tribunal may not make a Possession Order, unless they are satisfied that it is 'reasonable and proportionate.' The factors they consider are contained in s 330A of the RTA and include:

- a. the nature, frequency and duration of the conduct of the renter which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations;
- b. whether the breach is trivial;
- c. whether the breach was caused by the conduct of any person other than the renter;

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- d. whether the renter has made an application for an intervention order and whether it was in force, contained an exclusion condition or other matters the Tribunal considers relevant;
- e. whether the breach has been remedied as far as is practicable;
- f. whether the renter has or will soon have capacity to remedy the breach and comply with their obligations under their rental agreement;
- g. the effect of the conduct of the renter on others;
- h. whether any other order or course of action is reasonable available instead of making a possession order;
- i. as the case requires, the behaviour of the residential rental provider or the provider's agent etc; and
- j. any other matter the Tribunal considers relevant.

The Tribunal will have regard to interests of the renter, the rental provider and any other relevant parties when determining this point.

Impact of the Human Rights Charter

The Charter of Human Rights and Responsibilities Charter 2006 sets out a number of basic human rights that must be upheld in Victoria. WHL are bound by this Charter when making decisions around pursuing eviction. These rights include the right to not have one's privacy, family or home unlawfully or arbitrarily interfered with, the protection of families, etc. WHL must demonstrate that we are not infringing on the human rights of the renter when pursuing eviction. This entails noting which rights are impacted and how they balance against the rights of others' who are affected by the renter's conduct. This is often not overly onerous but is an additional hurdle for consideration.

Helpful Links

See below some useful links with information that is relevant to this situation:

<https://hlp.justiceconnect.org.au/practice-areas/housing-and-tenancy/tenancy-at-vcat/the-reasonable-and-proportionate-test/>

<https://www.consumer.vic.gov.au/housing/owners-corporations>

<https://www.vcat.vic.gov.au/the-vcap-process>

<https://www.consumer.vic.gov.au/housing/renting/moving-out-giving-notice-and-evictions/evictions-and-immediate-notice/evictions-and-possession-orders>

<https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/renters-making-changes-to-the-property>