

## Renter Information Sheet

### **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.

### **Breaches of Duty**

The RTA sets out some obligations that renters must uphold, such as:

Section 60: Renter must not cause nuisance or interference with the peace

- E.g., loud music playing overnight

Section 61: Renter must not damage the premises or common areas

- E.g., scratching the floors with furniture

WHL can send a breach of duty notice for these sorts of things. If a breach is not complied with, WHL can obtain a Compliance Order which is a written document that states a renter must not commit another breach. The breach of duty notice must contain specific details about the breach, including a time & date. This is to preserve 'natural justice' and ensure WHL are only acting on legitimate matters. If the renter breaches again, WHL can send a Notice to Vacate and apply for a Possession Order to end the tenancy.

### Process:

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

It is important to note that each of these steps can take several weeks, depending on how busy VCAT are. The timeline between sending the first breach and reaching the eviction stage generally takes several months minimum. WHL will always continue to act on incidents where possible, but these timelines/delays come from the RTA & VCAT.

### **Danger**

If WHL believe that a renter is causing ongoing danger to other renters, we can send a Notice to Vacate. WHL must prove that a threat still exists and is not a one-off incident. Police usually can't give information to WHL because of privacy laws. WHL must rely on witnesses to attend the hearing

## Resolving Renter Disputes at VCAT

to give the evidence. VCAT usually asks for proof that renters have been calling the police (such as phone logs and testimonials).

### Ending tenancies

Renters have very strong rights when it comes to living in their properties. Ending a tenancy at VCAT is extremely difficult, as the Member (who acts as the judge) will ensure all legal rights and human rights of the renter are upheld. The Member will consider:

- The 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 renter has nowhere else to live, it is unlikely that they will grant a Possession Order.

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

### 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 likely won't obtain a Compliance Order or Possession Order. This is because the Tenancy Officer can only share second hand information, whereas a witness can give a first-hand experience.

VCAT is not a scary experience and the witness will just have to answer some questions about the situation so the Member can understand what is happening.

### Further queries

If you have further questions about this process, please contact your Tenancy Officer.

Alternatively, advice can be sought from Consumer Affairs Victoria on 1300 55 81 81 or Tenants Victoria on (03) 9416 2577. For further details about VCAT, visit <https://www.vcat.vic.gov.au/case-types/residential-tenancies>