



CBOS

Consumer, Building &
Occupational Services

Promoting a fair marketplace



The Rental Guide

A guide for property owners, property managers, tenants and tenant advocates in Tasmania

Consumer, Building and Occupational Services
Department of Justice





Consumer, Building and Occupational Services

This booklet is a guide to the rights and responsibilities of:

- owners and managers of residential rental properties
- tenants of residential properties and tenant advocates

This version of the Rental Guide includes changes that came into effect up to 1 May 2019. If you have questions please contact Consumer, Building and Occupational Services (CBOS) on

P 1300 654 499

E cbos.info@justice.tas.gov.au

W www.cbos.tas.gov.au

You can download a free copy from www.cbos.tas.gov.au

If you are hearing or speech impaired, you can contact us through the National Relay Service:

- TTY users phone 133 677, then ask for 03 6232 7133
- Speak and Listen users phone 1300 555 727 then ask for 03 6232 7133
- Internet relay users connect to the NRS www.relayservice.com.au then ask for 03 6232 7133
- If you need an interpreter phone: 13 14 50

Disclaimer - This document is based on the *Residential Tenancy Act 1997* (the Act). It was prepared as a plain English guide to the law relating to residential tenancies in Tasmania. No responsibility is accepted for any errors or omissions it may contain. For precision, reference should be made to the Act. This guide is not intended to replace independent legal advice.

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About the Tasmanian Residential Tenancy Act 1997

The *Residential Tenancy Act 1997* applies to most residential tenancy agreements in Tasmania. A residential tenancy agreement exists where a right to live in a property is given to the tenant by the owner in exchange for rent.

The Act applies to both verbal and written agreements. However, some specific types of accommodation or agreements are exempted under the Act. These are noted below.

The Act applies to agreements to rent boarding premises. There are a range of extra provisions included, specific to this type of agreement.

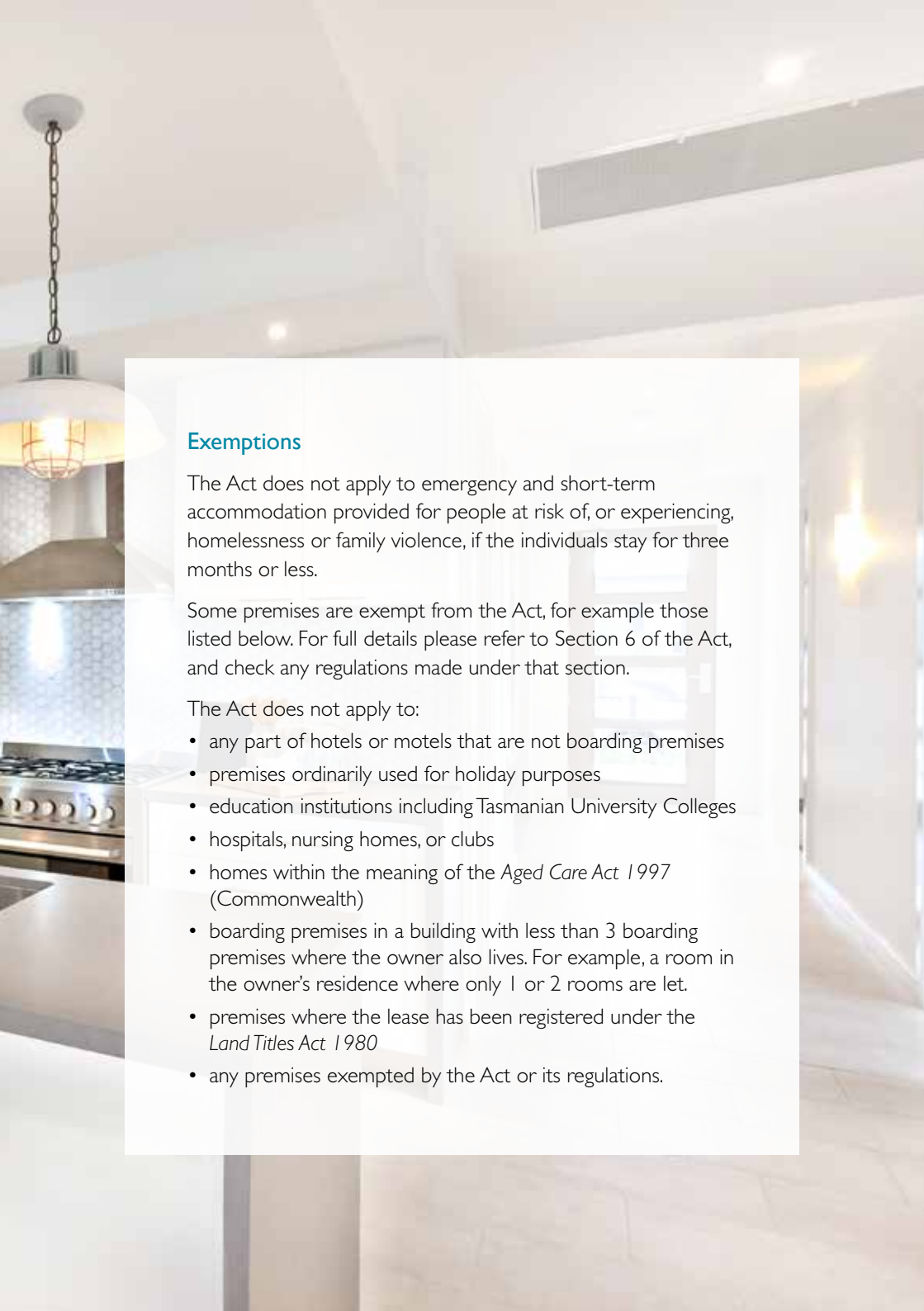
The Act also applies to rental dwellings owned by the Government. This includes those provided by Housing Tasmania or a social housing provider.

If you are unsure whether the Act applies to your rental agreement contact Consumer, Building and Occupational Services:

Email cbos.info@justice.tas.gov.au

Phone **1300 654 499**

The Act and Regulations can be found at
www.legislation.tas.gov.au



Exemptions

The Act does not apply to emergency and short-term accommodation provided for people at risk of, or experiencing, homelessness or family violence, if the individuals stay for three months or less.

Some premises are exempt from the Act, for example those listed below. For full details please refer to Section 6 of the Act, and check any regulations made under that section.

The Act does not apply to:

- any part of hotels or motels that are not boarding premises
- premises ordinarily used for holiday purposes
- education institutions including Tasmanian University Colleges
- hospitals, nursing homes, or clubs
- homes within the meaning of the *Aged Care Act 1997* (Commonwealth)
- boarding premises in a building with less than 3 boarding premises where the owner also lives. For example, a room in the owner's residence where only 1 or 2 rooms are let.
- premises where the lease has been registered under the *Land Titles Act 1980*
- any premises exempted by the Act or its regulations.

Beginning a tenancy

Tenancy agreements

When a property is rented there is an agreement between the owner and the tenant, called a lease. If the agreement is in writing, the owner must give the tenant a copy of the agreement within 14 days of beginning the tenancy. The agreement should be easily legible, clearly expressed, and printed in a font size of 10 points or more. This text is 10 point.

The owner should suggest tenants get a copy of this Guide at www.cbos.tas.gov.au. If the property has strata title there are rules that must be followed. The owner must give the tenant a copy of the rules at the time of entering into the agreement.

A lease is a contract between an owner and a tenant. It is preferable that a lease is written, stating all the terms of the agreement. Any changes to the agreement should be recorded in writing, such as rent or the dates of the tenancy agreement.

Fixed term agreements

If a residential tenancy agreement has an expiry date then it is called a fixed term agreement. Fixed term agreements must run for at least four weeks. The owner cannot ask the tenant to move out before the expiry date unless the tenant has broken a condition of the agreement. This is the case even if the property is sold. However, a tenancy can be terminated if the bank forecloses due to the owner defaulting on their mortgage.

For more details see 'Ending a fixed term tenancy agreement' on page 34.

Agreements with no fixed term

If a tenancy agreement (written or verbal) does not have an expiry date then it is called an agreement of no fixed term. For more details see 'Ending a tenancy agreement with no fixed term' on page 36.

A lease cannot contain provisions which conflict with the *Residential Tenancy Act 1997*

Up-front entry costs

The only up-front costs an owner or agent may charge a tenant when beginning a tenancy are:

- a rental bond (a security deposit up to the cost of four weeks rent) – see 'How to pay a bond' on page 18
- rent in advance for the first payment period (usually two weeks rent if rent is paid fortnightly)
- a holding fee. This is where the owner agrees to hold a vacant property, for more than seven days, until the tenant can move in. This fee is usually not refundable.

The owner cannot charge any other fees, such as an application fee, or a fee to find a property for a tenant.

Minimum Standards for rental properties

There are a range of Minimum Standards that apply to all rental premises.

Under these Standards, before a rental property can be leased it must:

- be weatherproof and structurally sound
- be clean and in good repair
- be adequately ventilated
- be connected to a sewer, on-site waste management or other council approved toilet system
- have hot and cold running water
- be connected to an electricity system
- contain a separate bathroom and/or toilet
- include window coverings in any room that the owner knows is likely to be a bedroom or living area.
- have cooking facilities which include an oven and at least:
 - o two cooking elements for a premises with less than three bedrooms, or
 - o three cooking elements for three or more bedrooms.

Heating

The Minimum Standards require heating to be installed in the main living area of the premises.

This heating may be:

- a fixed electric or gas heater
- a heat pump, or
- a wood heater.

For environmental and safety reasons, the Minimum Standards do not allow an open fireplace as adequate heating. Although it is possible to rent a property with an open fireplace, it will not be sufficient for this to be the

only form of heating available. This is unless an exemption is granted by the Residential Tenancy Commissioner.

Ventilation

All rooms should be adequately ventilated by windows or openings with a surface area of at least 5% of the size of the room. For example, if the room is 10m² it should have a window or opening that is at least 0.5m².

If the room does not have windows or openings, it can still meet the requirements if it opens into a room that has adequate ventilation. For example, a storage room off a bedroom and the bedroom has adequate opening windows.

A special provision is made for bathrooms, toilets and laundries. It is termed "sanitary compartments" in the Act. These rooms are still compliant without windows if they have an exhaust fan, or similar. This exhaust fan must either vent outside or vent into a roof space that has open eaves or roof vents.

Windows and doors are likely to be the most common form of ventilation in a room. If the ventilation source is a window only, the window must be able to be securely fastened in an open position of at least 15cm wide. This enables ventilation while restricting entry.

Further information on the Minimum Standards can be found on the CBOS website www.cbos.tas.gov.au.

Exemptions to Minimum Standards

The Residential Tenancy Commissioner has the power to grant exemptions to the Minimum Standards. Exemptions can be granted for a premises or a class of premises. The Commissioner will consider applications for an exemption on a case by case basis. Details on how to make an application are available at www.cbos.tas.gov.au.

Exemptions will be considered by the Commissioner where a premises or class of premises:

- do not meet the wording of the provisions, but demonstrates that it meets the intent of the provisions. Example: a group of residential tenancies that have a shared communal kitchen and dining area. This premises therefore

does not have all the cooking facilities within their tenancy), or

- should not have the Minimum Standard apply due to an alternative design or technological solution. For example, where a remote house has been built using double or triple glazing and has no neighbouring properties. This may remove the need for the property to have window furnishings,

and the tenant will not be unfairly disadvantaged by an exemption.

Smoke alarms

Owners must install smoke alarms in all tenanted properties. These smoke alarms must comply with AS3786 or AS 1670.1. They must be functional and within their expiry date at the beginning of the tenancy.

All smoke alarms must be either:

- mains powered, or
- powered by a 10-year non-removable lithium battery.

Tenants must ensure the smoke alarm is functioning for the duration of the tenancy. Tenants must advise an owner if the smoke alarm stops working. An owner must repair or replace the alarm as soon as practicable.

The Residential Tenancy (Smoke Alarms) Regulations 2012 outline the requirements for smoke alarms in residential tenancies. It includes provisions relating to the location of smoke alarms. This also aligns with the requirements under the National Construction Code.

In summary, in houses, flats and units, smoke alarms are required in the area, hall or corridor outside a bedroom. At least one smoke alarm is also required in any storey that does not contain a bedroom.

In a boarding house, smoke alarms are required inside every bedroom as well as in the hallways or thoroughfares outside bedrooms.

For more information on smoke alarms visit the Tasmania Fire Service website www.fire.tas.gov.au

The Residential Tenancy Commissioner can issue orders on owners in relation to smoke alarms. For information, see the website www.cbos.tas.gov.au or call 1300 65 44 99.



Australian Standards

AS 3786:2014 *Smoke alarms using scattered light, transmitted light or ionization*

AS 1670.1:2018 *Fire detection, warning, control and intercom systems - System design, installation and commissioning* Fire

Copies of Australian Standards are available at
<https://infostore.saiglobal.com>

Condition reports

A condition report describes the property's general state of repair before the tenant moves in. If an owner wants a tenant to pay a rental bond, they must give the tenant two signed copies of a condition report at or before the beginning of the tenancy.

If a tenant finds damage or issues such as unclean areas that are not described in the condition report, they may add the details to both copies before signing the document. The tenant must then return a signed copy to the owner within two days of receiving the documents.

It is very important for both tenant and owner to keep a copy of the condition report in case there is a dispute at the end of the tenancy. If the tenant is responsible for any damage (apart from fair wear and tear) that wasn't there when they moved in, the owner may apply to withhold a portion of their bond to pay for repairs.

If an owner fails to provide a tenant with a copy of a condition report, any claim to damages at the end of the tenancy will be difficult to show. A tenant

can make their own condition report and provide it to the owner if they wish. This acts as proof the state of the premises at the beginning of the tenancy.

A template condition report is available on our website www.cbos.tas.gov.au

If an owner wants a tenant to pay a bond (security deposit), they must give the tenant two signed copies of a condition report on the property.

Record keeping

It is a good idea for both tenants and owners to keep a rental file.

This should contain records of all:

- rental agreements
- condition reports
- letters
- requests for repairs
- notices
- receipts, and
- invoices

An owner must also keep a rental ledger. Both tenant and owner should make sure that all important requests are made in writing, and are signed and dated. These documents are very useful in case any misunderstandings or disputes arise.

Both tenant and owner should make sure that all important requests and notifications are made in writing and are signed and dated.

Bond lodgement and paying a bond contribution – MyBond

From 1 May 2019, a new system started for all bond transactions in Tasmania, called MyBond. It is available at www.cbos.tas.gov.au/topics/housing.

A bond (sometimes called a 'security deposit') is a payment by a tenant that acts as a security for the owner. It protects the owner from any financial loss if a tenant does something the lease does not allow, or fails to do something the lease requires them to do.

A bond cannot be more than four weeks' rent, and cannot be increased during the tenancy.

It is **illegal** for property owners to receive a bond from a tenant and for a tenant to pay their bond to a property owner.

All bonds must be held by the Rental Deposit Authority. A bond may be paid as one amount, or multiple tenants may contribute individually, called a 'bond contribution'.

How to register in MyBond

Tenants

If your bond was active on 1 May 2019, you will already have a MyBond account. You can use your email address, or mobile number and surname, to log in.

A new tenant can be registered in MyBond in two ways:

- an agent or an owner can register a new tenant as part of the bond lodgement process, or
- a tenant can pre-register, before the agent or owner completes the bond lodgement.

For an owner or agent to register a new tenant, they will need the tenant's date of birth and email address and/or mobile number. When the tenant is registered, they will receive a notification from MyBond via SMS and/or email. This notification will contain the Tenant's unique MyBond Tenant ID. The tenant can use their email address, mobile number and surname, or Tenant ID, to log in to MyBond. Once logged in, a tenant can view and edit their contact details and claim their bond.

You only need to register in MyBond once. You can use the same MyBond account for all future tenancies. It is important that you update your MyBond account if your contact details change.

If you have trouble logging in to MyBond, please call 1 300 654 499. You must have your Tenant ID or bond number handy to receive help over the phone. If you do not have your Tenant ID or bond number, you can contact your owner/agent or go to any Service Tasmania shop with identification. Your local State Library can also assist with internet access and completing steps in MyBond.

Owners and Agents

To have a bond held for a rental property, owners/agents need to be registered in MyBond. The owner/agent needs to complete the bond lodgement process. This will then allow the tenant to pay the bond.

A property manager must be licensed with the Property Agents Board to collect bond payments. It is illegal for a property owner to receive a rental bond from a tenant.

Note: If you were a registered agent or property owner with the Rental Deposit Authority and have active bonds registered prior to 1 May 2019, you will have been pre-registered in MyBond.

If you do not know the login details for your agency or owner account, please contact us on 1300 654 499.

If you are a new agency or property owner and did not have any bonds registered before 1 May 2019, you will need to register for a new MyBond account.

Once your account has been verified, you will receive your username and password via email. See our website for more information and for the Quick Reference Guides at www.cbos.tas.gov.au.

How to lodge a bond

Once registered an agent or owner must login to MyBond and complete the bond lodgement process before the tenant can pay the bond.

The lodgement process will name:

- the tenant
- the tenancy details
- the rental property
- the bond amount
- how the bond is being paid, and
- how much each tenant is paying.

If the tenant is receiving assistance from a Deposit Contributor, for example, Anglicare, you enter this during the bond lodgement process. You can select the Deposit Contributor from the drop down list available. Bond contributions can only be accepted from Deposit Contributors prescribed under the Residential Tenancy Act Regulations.

Once the bond details are submitted, the tenant and Deposit Contributor will receive a notification asking them to pay. The notification will include the bond reference number.

An owner/agent can enter the new bond details and save the record, before submitting later if they need.

How to pay a bond

Once the bond details are lodged by an owner/agent, the tenant is notified and asked to pay. Tenants can only pay the exact amount set up for them in the bond lodgement process. At the end of the tenancy, tenants can only claim the bond contribution amount.

A tenant can pay their contribution:

1. online via the secure PayWay in the MyBond system, or
2. via their property manager in a real estate agency (an agent) if the agency accepts bonds, or
3. at Service Tasmania, using the Bond barcode or Bond number received in their notification.

If the bond is paid to an agent, the agent must lodge it with the Rental Deposit Authority (RDA) within 10 working days.

The RDA holds the money until the end of the tenancy when someone registered against the bond record claims it back.

Bond assistance

If you think you may need or be eligible for bond assistance, search for Housing Connect at www.communities.tas.gov.au/housing

If the tenant has bond assistance, the agent/owner must enter the Private Rental Assistance number when lodging the bond details. The Deposit Contributor will receive a notification asking them to pay direct to the Rental Deposit Authority.

Transferring a bond

During a tenancy:

- a property may be sold to a new owner
- management may transfer between the owner or agent
- tenants may leave or new tenants may move in.

The agent/owner must update the MyBond record when registered bond details change.

Change of ownership or management of property

A property manager must update the MyBond record when the manager of a rental property changes, which can happen when:

- a property agent takes over management of a property for an owner
- a property is sold, or
- management of a property transfers to a new agent or back to the owner.

Before a transfer can be done, the owner/agent must know the details of the new owner/agent.

The outgoing owner/agent needs to complete the bond management transfer in MyBond. The new owner/agent will receive notification and must accept the transfer in MyBond to complete the process.

Once the incoming owner/agent accepts management of the bond, the outgoing owner/agent will no longer be able to view the bond details.

See our website for more details and to read the Quick Reference Guide at www.cbos.tas.gov.au

Transferring tenants in and out of properties

Where one or some tenants in a property move out or new tenants move in and contribute to the bond, the owner or agent must update the MyBond record.

Only an agent or owner can update the MyBond details or start a transfer process in MyBond. If tenants want to leave or move into a property, they should see their owner or agent first.

There are two ways an owner/agent can transfer tenants in MyBond:

1. Tenant variation

This is adding and removing tenants as well as adjusting their bond contribution amounts in MyBond. The tenants sort out their money between themselves and the record is adjusted afterwards. NO money is transferred through the MyBond system. The tenants should agree in writing to the agent or owner changing their bond record, for example by signing a Tenant Variation form. The owner/agent must upload a copy of the tenants' consent to MyBond.

There must be at least one continuing tenant. Tenants with bond assistance cannot be added or removed from a bond.

When an owner/agent submits a Tenant variation in MyBond, all tenants affected by the variation will receive a notification from MyBond. If a tenant disagrees with the details of the variation, they should contact their owner/agent.

If an owner/agent has made a mistake with the variation, they can edit the variation or email the Rental Deposit Authority for help. Another Tenant variation cannot be lodged until 7 days after the previous one.

2. Tenant swap

This is changing one tenant for another for the same amount of money. The new tenant pays their money to MyBond and the old tenant receives their money from MyBond. Tenants must NOT pay each other directly if using this swap process.

When an agent or owner submits a Tenant swap in MyBond, the outgoing tenant will receive a notification from MyBond for the tenant to approve the swap and enter their bank details. After the tenant has done this, the new tenant will receive a notification from MyBond to pay their bond. Once MyBond receives the new tenant's money, MyBond will pay the outgoing tenant. The outgoing tenant is then removed from the bond and the new tenant is added.

There must be at least one continuing tenant on the MyBond record. Tenants with bond assistance cannot be added or removed from a bond.

See the CBOS website for more details including when a bond cannot be transferred.

Only people named on the bond record can claim back their bond contribution.

How to claim a bond

From 1 May 2019, all bond claims must be made through MyBond. If you do not have access to MyBond, contact CBOS on 1 300 654 499.

There are rules about what can and cannot be claimed from a tenant's bond. See the CBOS website at www.cbos.tas.gov.au for more details about bond disputes, evidence and what is considered by the Residential Tenancy Commissioner when making a decision about a bond dispute.

Owner or agent

To claim a bond, an owner/agent must:

- start a claim in MyBond within three working days of the tenants returning the keys, or
- advise the tenants why they have not yet lodged a claim and when they are intending to do so.

The owner/agent will need to know how much they are claiming and for what reason.

Once a claim is lodged, the tenants will receive a notification from MyBond with details of what the claim is for.

A tenant can then approve or dispute the claim in MyBond.

Tenants

A tenant may make a claim if:

- the owner/agent has not made a claim within three working days of the tenant handing back the keys, or
- the owner/agent has not indicated they will make a claim.

Deposit Contributors

A Deposit Contributor can:

1. Approve or dispute a claim.
2. Start a claim against their part of the bond if an owner/agent has not done so within 10 days of the keys being handed back.

Approving or disputing bond claims

Once a claim is lodged by any party to the bond, the other parties will receive a notification from MyBond and will have an opportunity to approve or dispute the claim.

If the owner/agent lodges a claim, the tenant will receive a notification to:

1. Approve or dispute the claim within 14 days. If the tenant does not do anything within the 14 days, the bond may be paid out as claimed by the owner/agent.
2. Enter their bank account details for payment.

If the tenant initiates a claim, the owner/agent will receive notification to respond to the tenants claim within 14 days. If they do not respond, the claim may be paid out to the tenant. If the owner/agent disputes the tenant's claim, the tenant, will need to contact them to find out what the claim is for.

Agreed claims

Where the parties approve a bond claim, MyBond will release the bond money within 48 hours to the bank account details supplied. Allow an extra 3-5 business days for bank processing times. An agreed claim cannot be disputed later.

If a tenant does not have access to MyBond, they can provide their bank account details directly to the Rental Deposit Authority (RDA) by emailing rda@justice.tas.gov.au with their bank details and some identification.

Disputing a bond claim

If anyone connected to the bond does not agree to a claim against the bond, the claim will be referred to the Residential Tenancy Commissioner (RTC) as a 'dispute'.

The parties will have an opportunity to provide evidence to support their claims.

The RTC will assess the evidence and make an impartial, evidence-based decision, called a 'Determination'. When a Determination is made, all parties to the bond will receive a notification and be able to view the Determination.

If you are unhappy or disagree with the Determination, you can appeal to the local Magistrates Court.

How to dispute a bond claim

If you receive notification that a claim has been made against a bond, you should log in to MyBond to view the claim. If you do not agree with the claim, you can dispute it in MyBond. If you are unsure about the claim, you should contact your owner/agent.

If a bond claim is disputed, all parties have 14 days to provide evidence to support their claim. Examples of evidence you can use to support your claim:

- lease agreement
- rental ledger
- ingoing and outgoing condition report
- photographs
- invoices and receipts showing an ABN of the business who did the work.

You can upload your evidence directly into MyBond. See the CBOS website at www.cbos.tas.gov.au for more information about disputes, evidence and uploading documents.

After the 14 days have passed, the Commissioner's office will review all evidence provided and make a Determination. This can take up to 30 business days from the date of the claim.

When the Determination has been made, everyone connected to the bond will receive a notification from MyBond.

Everyone then has 7 days to appeal the Determination in the Magistrates Court if they disagree with the Determination. Visit www.magistratescourt.tas.gov.au and follow the links to 'residential tenancy' for more information.

If an appeal is lodged, MyBond will not release any money until the Court issues an Order.

If no appeal is lodged, MyBond will release the bond money as stated in the Determination within 48 hours to the bank account details supplied in MyBond. Allow a further 3-5 business days for bank processing times.

How to lodge evidence

You can lodge evidence by uploading it to the bond dispute in MyBond. If you are unable to upload it in MyBond, contact the Commissioner's office on 1300 654 499.

There are also rules about what can and cannot be claimed. See the CBOS website at www.cbos.tas.gov.au for more details about bond disputes and lodging evidence.

During a tenancy

Rent

Paying rent

A tenancy agreement will specify a payment period, for example fortnightly. Rent for each payment period must be paid in advance. The payment period can only be changed if both tenant and owner agree. If the tenant pays rent using cash or cheque the owner must give the tenant a receipt that details:

- the date rent was received
- the period rent was received for
- the name of the tenant
- the address of the premises for which rent was paid, and
- the amount received.

An owner/agent must provide at least one method of paying rent that does not involve a fee or charge to the agent.

Rent can only be increased 12 monthly regardless of the date the agreement was signed.

Increases in rent

Rent can only be increased if there is a written lease that allows for rent increases, or if the lease is not in writing.

An owner can only increase the rent after giving the tenant at least 60 days written notice before the new rent amount is to start.

The notice must state:

- the amount of the new rent, and
- the day on which the new rent begins.

The rules around rent increases allow a tenant to know their rental obligation for at least 12 months. In most cases, rent cannot be increased mid-tenancy - it can only be increased:

- at the beginning of the lease, or
- when the lease is renewed or extended.

If the lease is longer than 12 months, rent can be increased 12 months after the start of the lease.

If the lease is less than 12 months, rent can only be increased at least 12 months after the tenancy started. This is the case even after the lease is extended or renewed. For more information on rent increases, visit our website at www.cbos.tas.gov.au

If you think a rent increase is unreasonable, contact CBOS. You can also contact one of the services listed under 'Problems and disputes' at the back of this booklet.

Unreasonable rent increases can be reviewed by the Residential Tenancy Commissioner (RTC). The RTC may order the owner to change the increase if it is not comparable with other rents charged for similar rental properties. See our website to find the *Unreasonable Rent Increase application form*. You will need to provide a copy of the lease and the notice of rent increase. You should include the reasons why you believe the rent is unreasonable when compared to similar properties.

Privacy and access

Right to quiet enjoyment

An owner must not interfere with the reasonable peace, comfort and privacy of a tenant. If a tenant feels that they are not being allowed this right, they should raise the issue with the owner or agent.

If this does not resolve the issue you can contact any of the services under 'Problems and disputes', listed at the back page of this booklet. You may also wish to lodge a complaint with CBOS using the online complaint form.

Entry by the owner without permission

An owner and tenant should agree on times when the owner may enter the premises. If the owner and the tenant cannot agree, an owner may enter the premises without the tenant's permission only if it is reasonably believed that:

- a tenant is injured or ill and so is unable to give permission
- the property has been or is likely to be damaged
- the property has been abandoned.

An owner may enter the premises without permission between 8.00am and 6.00pm if they give at least 24 hours' notice:

- to meet commitments under the tenancy agreement
- if it is reasonably suspected that the tenant has not complied with the tenancy agreement
- to ensure that repairs have been properly carried out
- to carry out routine inspections. These may be carried out every three months.

Showing the property

If the property is going to be sold or re-let the owner must gain written permission from the tenant before holding an 'open home'.

Owners and tenants should agree on suitable times to show the property to individual prospective purchasers or tenants. If a mutually acceptable time cannot be agreed the following provisions apply.

Showing the property to potential new tenants

If an owner and tenant cannot agree on an acceptable time, an owner can enter the property to show a potential tenant and anyone accompanying them with the following conditions:

- a notice to vacate has been given to the current tenant
- the current tenant has given a notice to terminate the agreement
- a fixed term agreement has less than 28 days to go before expiring.

In this case an owner can enter the property after giving 48 hours' notice in writing and with the following conditions:

- only once per day
- on no more than 5 days in any week
- only between the hours of 8.00am and 6.00pm.

Showing the property to potential purchasers

If an owner and tenant cannot agree on an acceptable time, an owner can enter the property after giving 48 hours' notice in writing. After 48 hours, the owner can show a potential purchaser and anyone accompanying them through the property with the following conditions:

- only once per day
- on no more than 5 days in any week
- only between the hours of 8.00am and 6.00pm.

Advertising photographs of tenanted properties

When advertising a property for sale or rent which has existing tenants, owners must gain written permission of the tenants to publish or display images of the property which might identify the tenant or any other person.

Maintenance and repairs

Owner's obligation to maintain the premises

An owner must maintain the premises as close to the same condition as when the tenancy started. This is apart from general wear and tear. If repairs are needed, that are not the tenants' fault, the owner repairs the property at their own cost.

If general repairs are needed, an owner has 28 days from being notified to repair the issues. If the repairs relate to a heating element of a stove, this should be repaired within 14 days of being notified.

Tenant's obligations

Tenants must keep the premises in a reasonable state of cleanliness. Tenants must ensure that the premises is in a similar condition to the start of the tenancy apart from reasonable wear and tear. If a tenant causes a need for repairs, they must pay any costs involved.

If repairs are needed, a tenant should notify the owner within 7 days. It is recommended that the notification is in writing. Always keep a copy of correspondence.

Tenants must also ensure that all smoke alarms are tested regularly and kept clean.

General repairs

If the repairs are general in nature, the owner has 28 days from when the tenant notified them in which to make the repairs.

There is an exception - if the general repair relates to a cooking stove, it must be undertaken in 14 days. If the repairs are urgent or emergency repairs they must be made as soon as possible.

Urgent repairs

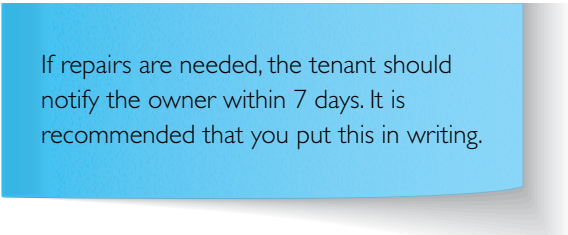
An urgent repair is when an essential service is no longer functioning. If this happens:

- the tenant must notify the owner of the need for urgent repairs as soon as they are aware of the problem
- the owner has an obligation to carry out the repair or restore the service as soon as possible.

Essential services include:

- water
- sewerage
- removal of waste water from kitchens, bathrooms and laundries
- electricity
- heating
- cooking stove
- hot water service.

'Functioning' means the item no longer works as it originally did or reasonably should work. For example, a cooking stove is no longer functional if half the cooking elements are not working.



If repairs are needed, the tenant should notify the owner within 7 days. It is recommended that you put this in writing.

Emergency repairs

Emergency repairs are required when damage occurs, such as a broken window from a storm. A repair is an "emergency" when further damage could happen if the repair isn't undertaken as soon as practicable.

In the case of an emergency or an urgent repair, a tenant can arrange the repair themselves if they can't contact the owner. A tenant can arrange for the nominated repairer (provided by the owner) to undertake the repair and invoice the owner.

If the owner has not nominated a repairer, the tenant can have a suitably qualified person undertake the repair. In this situation, the tenant must pay for the repairs and the owner must reimburse the tenant.

Reasonable wear and tear

Reasonable wear and tear, in general terms, includes minor marks and scratches and things that deteriorate naturally. Wear and tear is not reasonable if caused by the tenant, even if it was an accident. For example, stains on carpet and deep scratches to floor boards are generally not considered reasonable.

Locks and security devices

An owner must ensure that the property is fitted with locks and security devices necessary to secure the premises. The owner must ensure these are maintained during the tenancy. If the premises aren't adequately secured, a tenant should discuss the matter with the owner.

If this does not resolve the matter, the tenant can talk to CBOS. Alternatively, speak to any of the services listed under 'Problems and disputes' at the back of this booklet.

A tenant can seek an order from a Magistrate that the owner have adequate locks installed.

If a Family Violence Order has been issued, the tenant may alter or remove any lock or security device without the owner's consent.

Alterations, additions and fixtures

A tenant must not make any alterations, additions, or add fixtures, to a property without the written consent of the owner.

If alterations cause damage, the tenant should notify the owner as soon as possible. The owner may allow the tenant to repair the damage or request compensation for the cost of repairs.

If the owner cannot be contacted

If an owner is going to be away or uncontactable, they should give the tenant the name of a person to contact if an urgent repair is needed. This person is called a 'nominated repairer'. They will undertake repairs to essential services on the owner's behalf.

Many owners include the name of a nominated repairer in the tenancy agreement. If the owner cannot be contacted, or fails to carry out the repair, the tenant may contact the nominated repairer to carry out the repairs. The nominated repairer will charge the owner for their services.

If there is no nominated repairer or they cannot be contacted, the tenant may arrange for a suitably qualified person to carry out the repairs. The costs are paid by the tenant and then recovered from the owner. The owner must repay any costs to the tenant within 14 days unless they dispute the costs. If the owner disputes the cost they may apply to the Magistrates Court for a decision to be made.

Disputes about repairs

The owner must complete repairs within the required time. If they do not, they are in breach of the tenancy agreement. Where the owner fails to carry out repairs, or there is a dispute, the tenant can contact CBOS. The tenant may also contact any of the services listed under 'Problems and disputes' at the back of this booklet.

A tenant may apply to the Residential Tenancy Commissioner for an order requiring the owner to carry out repairs.

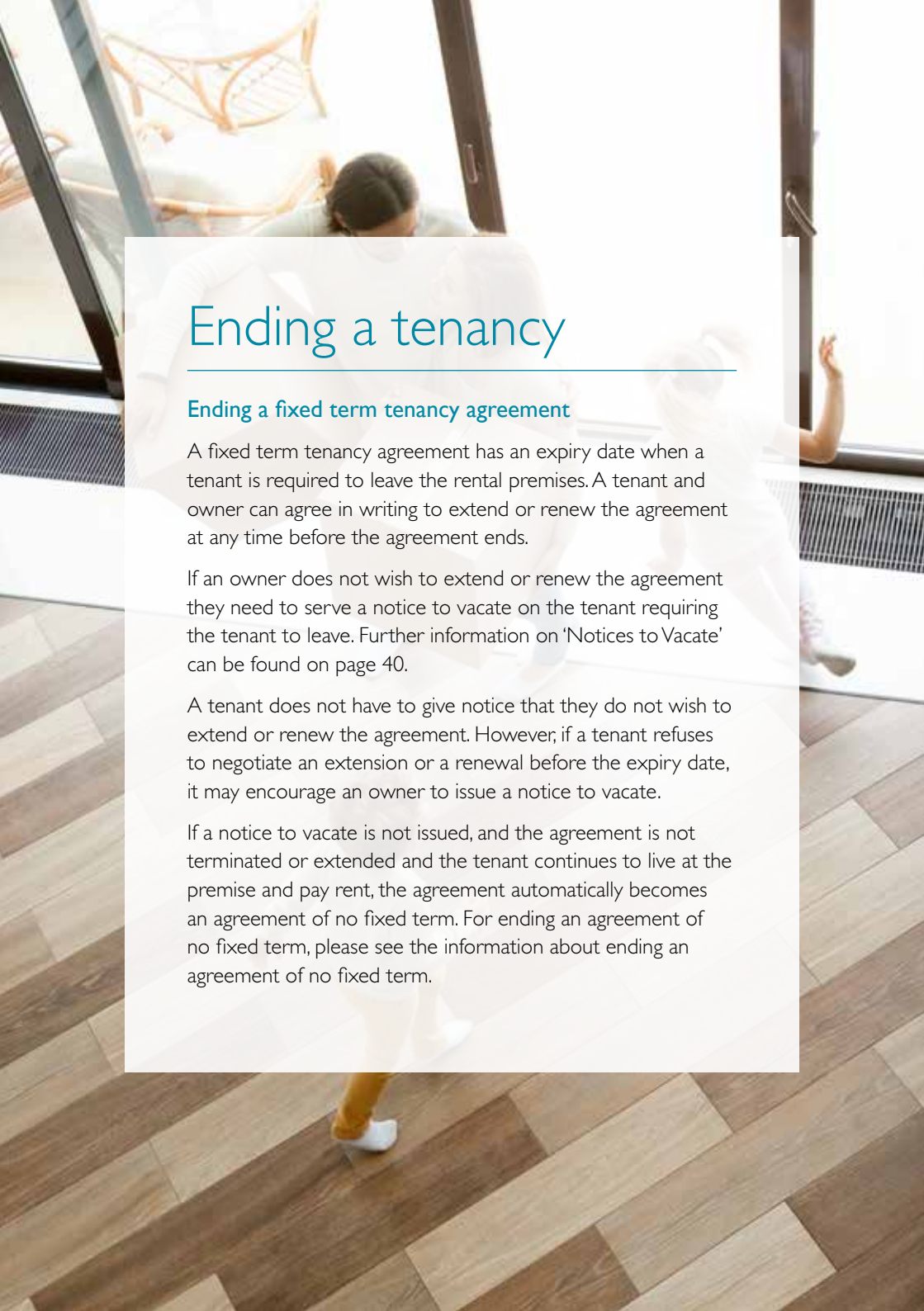
If a tenant has a fixed term agreement they may choose to leave the tenancy. This is done by giving a notice to terminate the agreement for failure to carry out repairs. See the section 'Notices to vacate/terminate a tenancy agreement' on page 40.

Water charges

A property owner can only charge a tenant for water consumption where:

- a water authority makes a separate charge for water consumption, and
- the premises are equipped with a device that calculates the amount of water used at the premises.

An owner and tenant should note the water meter reading at the start and at the end of the tenancy. Record this information on the condition report.



Ending a tenancy

Ending a fixed term tenancy agreement

A fixed term tenancy agreement has an expiry date when a tenant is required to leave the rental premises. A tenant and owner can agree in writing to extend or renew the agreement at any time before the agreement ends.

If an owner does not wish to extend or renew the agreement they need to serve a notice to vacate on the tenant requiring the tenant to leave. Further information on 'Notices to Vacate' can be found on page 40.

A tenant does not have to give notice that they do not wish to extend or renew the agreement. However, if a tenant refuses to negotiate an extension or a renewal before the expiry date, it may encourage an owner to issue a notice to vacate.

If a notice to vacate is not issued, and the agreement is not terminated or extended and the tenant continues to live at the premise and pay rent, the agreement automatically becomes an agreement of no fixed term. For ending an agreement of no fixed term, please see the information about ending an agreement of no fixed term.

Termination by a tenant

A tenant may terminate a tenancy for either of the following reasons:

- an owner has breached the residential tenancy agreement
- an owner has failed to carry out repairs (which were not caused by the tenant) within 28 days of being notified.

A notice to terminate must be in writing and must be served on the owner or agent. It must state the date on which the agreement will be terminated. This must be at least 14 clear days after the date of service. See the section 'Notices to vacate or terminate a lease' on page 40 of this booklet.

Breaking the lease

If a tenant wishes to leave a property (or "break the lease") before the end of the tenancy agreement they should give as much notice as possible.

In this situation, a tenant is responsible for paying rent until a new tenant is found or until the end date of their lease, whichever comes first. An owner must make reasonable attempts to find a new tenant. A tenant may help the owner to find a replacement tenant, for example by advertising.

An owner or agent may make a claim against the bond for any loss they incur from a tenant breaking the lease. An example is rental loss or any other money that is paid by the owner or agent such as advertising. These costs must be on a reasonable basis. For example it is unreasonable to claim advertising costs when the lease is due to end very soon. This is because the owner or agent would have to pay for this at the end of the lease anyway.

Some agencies may attempt to charge 'break lease' or 're-letting' costs. These charges should be itemised. If you disagree with the charges, contact CBOS.

After a tenant has left the property early and returned the keys, they are responsible for costs to return the property to how it was at the start of the lease, such as cleaning and gardening. An owner/agent should do their final inspection as soon as the tenant returns the keys. After this, however, tenants are not responsible for any costs other than rent.

If the owner wants the tenant to leave early

An owner may only demand that a tenant leave the property before the lease expiry date if:

- the tenant has breached the agreement or has caused substantial nuisance, or
- the property is due to be sold by a lending institution. At least 60 days' notice must be given to the tenant.

There is nothing stopping an owner negotiating with a tenant to end the lease early. An owner might offer to help with moving costs or reduce the rent until the tenant leaves.

For further advice contact CBOS or any of the services listed under 'Problems and services' listed at the back cover of this booklet.

Ending a tenancy agreement with no fixed term (no end date)

A tenancy agreement with no fixed end date can be ended when:

- the tenant and owner agree to end the tenancy
- the tenant gives the owner at least 14 days' notice that they wish to end the agreement and move out
- the owner gives the tenant at least 14 days' notice because the tenant is in breach of the tenancy agreement
- the owner gives the tenant at least 14 days' notice because the tenant has caused a substantial nuisance
- the owner gives the tenant at least 42 days' notice that the property is:
 - o to be sold
 - o transferred to another person
 - o significantly renovated
 - o used as a residence by a member of the owner's family, or
 - o used for a purpose other than as a rental property.

- a Magistrate orders that the agreement be terminated (see Court-ordered end to a tenancy)
- the property is due to be sold by a lending institution. At least 60 days' notice must be given.

Court-ordered end to a tenancy agreement

Serious damage or injury

An owner or tenant may apply to the Magistrates Court for an order of termination of a lease if the other party:

- causes or is likely to cause serious damage to the premises or contents
- causes or is likely to cause physical injury to an occupant of the premises
- causes or is likely to cause serious damage to a neighbouring premises
- causes or is likely to cause physical injury to a person from a neighbouring premises. An order of termination ends the agreement.

Family violence

If a Court makes a Family Violence Order against a tenant, the Court may also make an order ending their residential tenancy agreement. The Court may make a new agreement on behalf of the person affected by the violence, or on behalf of the person committing the violence. The new arrangement will continue on the same terms as the old agreement, except removing the relevant person/s. Any bond paid will remain with the Rental Deposit Authority for the new lease, regardless of who paid it.

Abandonment

A property is abandoned if:

- a tenant has left the property without notice, and
- a notice of termination has not been given by the tenant, and
- a notice to vacate has not been served by the owner.

The property is not abandoned if rent is still being paid for the property. If an owner believes that the property has been abandoned they may take possession of the property.

However, if the owner takes possession and the property has not been abandoned, they could be in breach of the Act.

Automatic termination

An agreement will automatically come to an end if the tenant dies and there is no other surviving tenant in relation to the premises.

An agreement also comes to an end where a closure order is made under the *Public Health Act 1997*.

Disposal or sale of abandoned goods



Visit our website for more
information at www.cbos.tas.gov.au

If a tenant leaves goods behind when they leave the property, the owner may do one of the following things:

If the goods are of no value

Donate or discard the items and sign a Statutory Declaration that describes the method of disposal.

If the goods appear to be worth less than \$300

Sell the items and sign a Statutory Declaration stating the method of disposal.

If the goods appear to be worth more than \$300

Apply to the Magistrates Court for an order to sell the goods.

If the items appear to belong to someone else

If the items have been bought on hire purchase, lent or stolen, contact the owner of the goods or seek advice from the police.

When the owner sells goods that have been abandoned by the tenant, the money can be used to cover any debts owed by the tenant. The owner must put any money left, after these debts are paid, into an interest-bearing account for 6 months. If the tenant does not claim the proceeds within 6 months, the owner must pay the left-over money to the Residential Tenancy Commissioner.

Costs of leaving early or abandoning a property

If a tenant has abandoned a tenancy, an owner can claim any financial loss arising from the early vacation, from the bond.

These charges must reflect actual expenses incurred by the owner. The Commissioner will require evidence of the costs when a claim is made on the bond.

Agents may charge the owner a set fee for re-letting a property, but they cannot be charged to the tenant or claimed from the bond.

Re-letting costs cannot be charged if the tenant is evicted. These costs also cannot be charged following a notice to vacate or an order from the Magistrates Court.

For more information visit our website www.cbos.tas.gov.au

Notices to vacate or terminate a lease

There are some situations in which a tenant or owner might wish to end a tenancy agreement early. Owners will often need to issue a notice to vacate, whereas tenants will issue a notice to terminate.

You can serve a notice by giving it to the person by leaving it at their last known address or by using a process server. If you believe that a dispute is likely to result from serving this notice, it is recommended that a witness be present. More information about how to serve a notice can be found at the Magistrates Court website at www.magistratescourt.tas.gov.au

An owner can claim financial loss as a result of a tenant abandoning a property or breaking a lease early.

Notice to vacate (for use by owners)

If an owner wishes to end a tenancy, they must serve a notice to vacate on the tenant. A notice to vacate is not needed if the premises has been abandoned or if a Magistrate has issued an order of termination. A notice to vacate may only be given in the following circumstances:

- for a fixed term agreement: if the agreement is due to expire within the next 60 days. In this situation, at least 42 days' notice must be given.
- the tenant has breached the agreement. However, if the notice is given because a tenant has breached the agreement and the tenant then complies before 14 days, the notice has no effect.
- a tenant has caused a substantial nuisance.
- if there is an agreement of no fixed term and the property is to be sold, renovated, rented to a family member, or used for a purpose other than as a rental: the owner must give 42 days' notice. If the premises are to be sold, the notice must be served with proof of an agreement to sell the premises.
- if the property is sold by a lending institution. At least 60 days' notice must be provided to the tenant.

Number of days in the notice period

When a specific number of days' notice is required, they must be 'clear' days. This means the date on which a notice is served and the date on which it takes effect are not counted as 'clear' days.

Example: Calculating dates for a notice to vacate – terminating a lease

Day on letter/ email/text	Clear days:	Action date: deliver vacant possession of the property
1 March	2 March to 15 March	16 March

Example: Calculating dates for a notice to vacate – property being renovated or lease ending

Day on letter/ email/text	Clear days:	Action date: deliver vacant possession of the property
1 March	42	
	2 March to 12 April	13 April

Example: Calculating dates for a notice to vacate

Day on letter/ email/text	Clear days:	Action date: deliver vacant possession of the property
1 March	60	
	2 March to 30 April	1 May

If you miscalculate the days and enter the wrong date in your notice this will delay the date on which it takes effect.

Contents of the notice to vacate

The notice to vacate must contain:

- the date of serving the notice
- the name of the tenant
- the name of the owner
- details of the premises
- the reason for giving the notice
- the date on which the notice takes effect.

Arrears in rent (rent owed)

If notice is given because a tenant is behind in rent payments, and the tenant pays all the rent due before 14 days, the notice has no effect.

This applies for the first two times in any 12 month period. On the third occasion in any 12 month period, the notice takes effect even if all rent owing is paid.

If a tenant will not leave

If a notice to vacate is served and a tenant does not leave, the owner must

apply to the Magistrates Court for an 'order for vacant possession'. If this happens, the owner must deliver a copy of the application to the tenant as soon as possible. If the application is not made within 28 days of the notice taking effect the notice lapses. This means that the owner must serve another notice to vacate if they want to pursue the matter.

When considering the application, the Court will consider whether:

- the notice to vacate was properly given
- the reasons for serving the notice were genuine or just
- the tenant was served with a copy of the application within a reasonable time.

Regaining possession of the property

It is an offence for an owner to regain possession of a property unless vacant possession is delivered by the tenant or ordered by the Court.

Notice to terminate (for use by tenants)

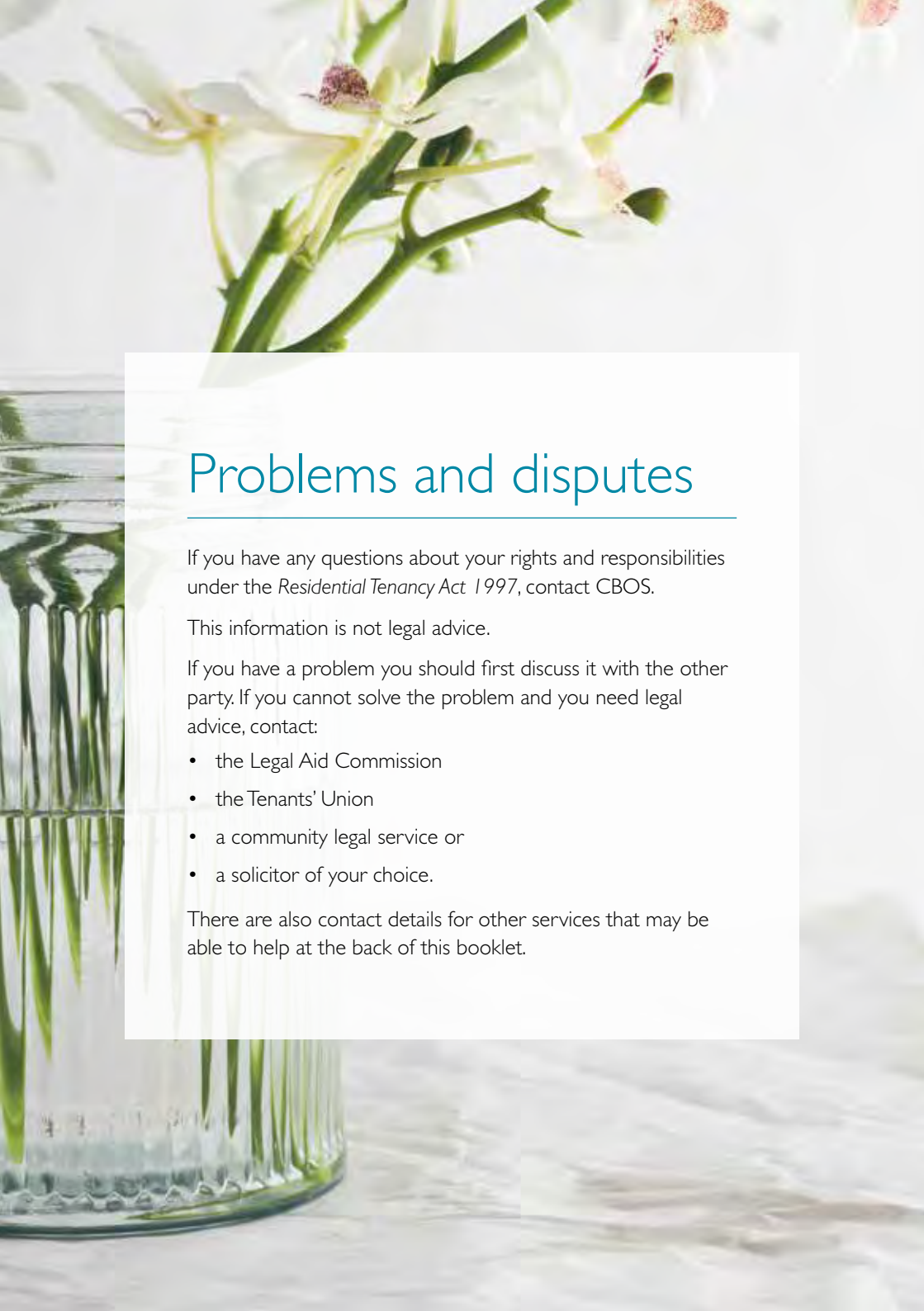
If a tenant wants to leave early because the owner hasn't complied with the agreement they must give the owner a notice to terminate. For example, if the property is not maintained properly. A notice to terminate for failure to carry out a repair cannot be served unless the tenant has notified the owner of the need for repairs and allowed 28 days to fix the issue.

A notice to terminate must contain the following information:

- the date of serving the notice
- the name of the tenant
- the name of the owner
- the premises for which notice is being given
- details of the grounds or reasons for the notice
- the date the notice takes effect.

If an owner complies with the notice within 14 days, the notice has no effect. However, if the notice is given for failure to carry out repairs, the notice still stands even if the repairs are carried out within 14 days.

A tenant is responsible for rent until the last day of the notice. If a tenant leaves without giving notice they may be liable for further rent or other costs including re-letting costs. See the section "Breaking the Lease" for more information.



Problems and disputes

If you have any questions about your rights and responsibilities under the *Residential Tenancy Act 1997*, contact CBOS.

This information is not legal advice.

If you have a problem you should first discuss it with the other party. If you cannot solve the problem and you need legal advice, contact:

- the Legal Aid Commission
- the Tenants' Union
- a community legal service or
- a solicitor of your choice.

There are also contact details for other services that may be able to help at the back of this booklet.

Enforcing rights in a court

If you want to enforce your rights under the *Residential Tenancy Act 1997* through the Magistrates Court you should get your own legal advice about your options.

Definitions

A tenant is someone who rents a property from the property's owner. The owner may employ a property manager/agent to look after the property while it is being rented to tenants. Throughout this booklet 'owner' means the actual owner OR the property manager/agent.

An advocate is a person or organisation who helps a tenant to rent a property.

Share houses

A share house is where two or more tenants rent a single property. There are two types of share house arrangements: sub-letting and co-tenant.

For information about share houses and rental bonds, see the section 'How to pay a bond' on page 18.

Sub-letting

Sub-letting is an arrangement where one tenant (called the head-tenant) rents the property from the owner and then enters an agreement to rent the property to another tenant (called a sub-tenant). In this situation only the head-tenant has a residential tenancy agreement with the property owner. The Act does not apply to an agreement between a head-tenant and a sub-tenant. Disagreements between head-tenants and sub-tenants are private matters.

A head-tenant:

- must occupy the premises
- is responsible to the owner for any damage, and
- is responsible for the rental bond and the rent for the property.

If a head-tenant is the employer of the sub-tenant, there is no need for the head-tenant to live at the property. A tenant cannot sub-let without the owner's permission. The owner cannot unreasonably withhold permission for a tenant to sub-let.

Co-tenant

Co-tenants are two or more people who rent the property as a whole. All tenant names are on the lease and condition report. There is only one bond for the property, usually equally divided between all tenants.

If a tenant leaves a share house they should contact the owner to ensure that their name is removed from the lease. A new tenant should contact the owner to ensure that their name is added to the lease.

The owner/agent must amend the MyBond record to reflect any changes.

Boarding premises (Boarding houses)

Boarding houses are subject to special rules – for example, tenants do not have to pay a bond when they move in, house rules must be made available, and meals served within particular times. Some tenants rent rooms in houses with shared facilities which may not be boarding premises. If you are unsure, contact CBOS.

If an owner lives on the premises and rents only one or two rooms, it isn't a boarding premises or share house. Therefore, the *Residential Tenancy Act 1997* does not apply.

If a boarding house tenant and owner cannot resolve a dispute, the Residential Tenancy Commissioner can help to resolve the issue. If an agreement cannot be reached, the Commissioner can make an order. Orders are enforced by a Magistrate. This means you can be fined more than \$8000 for not complying with an order.

For more information visit the CBOS website at www.cbos.tas.gov.au

Where to get more information

Consumer, Building and Occupational Services

1300 654 499 www.cbos.tas.gov.au

Rental Deposit Authority

1300 654 499 www.cbos.tas.gov.au/topics/housing/renting/bonds

Office of the Residential Tenancy Commissioner

1300 654 499

www.cbos.tas.gov.au/topics/housing/renting/bonds/disputes-about-a-bond

Real Estate Institute of Tasmania

(03) 6223 4769 www.reit.com.au

[Enquiries about housing assistance or public housing](#)

Housing Tasmania

1300 665 663 www.dhhs.tas.gov.au/housing

Housing Connect

1800 800 588 www.communities.tas.gov.au/housing

PROBLEMS AND DISPUTES

Tenants Union of Tasmania

1300 652 641 www.tutas.org.au

Legal Aid Commission of Tasmania

1300 366 611 www.legalaid.tas.gov.au

Hobart Community Legal Service

(03) 6223 2500 www.hobartlegal.org.au

Women's Legal Service of Tasmania

1800 682 468 www.womenslegaltas.org.au

Property Agents Board

(03) 6281 3480 www.propertyagentsboard.com.au

Magistrates Court of Tasmania

www.magistratescourt.tas.gov.au

Hobart (03) 6165 7136

Devonport (03) 6478 4353

Launceston (03) 6777 2945

Burnie (03) 6477 7140



Further Information

You may also contact the Tasmanian State Government
Helpline or email CBOS directly.

Department of Justice - Consumer, Building and Occupational Services

HELPLINE: 1300 654 499

Email: cbos.info@justice.tas.gov.au

Website: www.cbos.tas.gov.au

Address: PO Box 56, Rosny Park, TAS, 7018

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