



P I L C H

Tenancy

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Instructions (1)

Client:

*I've got to move out. I got an eviction notice.
It's not fair... It's just because I smoked a joint,
who cares? Everyone does it, even Barack
Obama...*

Question: does client need to move?

Depends on the notice. Remember the process:

1. Notice to vacate
2. Application
3. Hearing
4. Possession order
5. Execution of warrant

Instructions (2)

- *I just smoke grass. I need it.*
- *My next door neighbour is my landlord. I was being watched.*
- *“You’re mental! You’re smoking drugs! This is not a house for crazy people.”*
- *He pushed his way into my flat.*
- *He saw a small bag of marijuana*

Additional information

You: additional information??

- “Really really stressed”... “You’re mental... This is not a house for crazy people.”
- Documents?

Instructions (3)

- *Manic depression. I see a doctor and take medication... I told my landlord about my diagnosis.*
- Notice to Vacate says:
“You have used the premises or permitted their use for a purpose illegal at common law.”
- I found it stuck to my door

The Issues

- Merit? Will landlord succeed?
 - ‘Illegal use’ - Section 250:
 - *if the tenant has used the rented premises or permitted their use for any purpose that is illegal*
 - Facts: *a small bag of marijuana*
- Has tenant ‘used’ the premises illegally?

Notice to Vacate

Residential Tenancies Act 1997 S319(a)

Residential Tenancies Regulations 2008, Regulation 9(1)

To tenant of rented premises

Tenant's copy

Tenant details

- 1 This notice is given to (tenant/s names)

KATE HEPBURN

- 2 Regarding the rented premises at (insert address of rented premises)

7185 ALBERT STREET
CARLTON VIC 3053

- 3 Tenant/s address
(if same address as 2, write "as above")

AS ABOVE

Landlord/owner/mortgagee details

- 4 I am giving you this notice as (mark one only)

- ☒ the landlord
☐ the owner
☐ the mortgagee

- 5 Landlord/owner/mortgagee name

RICHARD TONKIN

- 6 Landlord/owner/mortgagee address for serving documents (can be an agent's address)

6185 ALBERT STREET
CARLTON VIC 3053

- 7 Contact telephone numbers for landlord/owner/mortgagee

() BH () 9818 1501
AH

Termination date

- 8 The Residential Tenancies Act 1997 requires me to give you at least (insert the number of days notice that is required under the Act)

14

days notice to vacate.

I require you to vacate on
(termination date)

14 / 05 / 09

9 Reason for notice to vacate

(Insert the reason and section number of the Residential Tenancies Act 1997 for the notice to vacate. You must also provide supporting factual information regarding the specific premises to validate the reason given. However, if the notice is given under S263 of the Act, insert that section number and the words 'No reason is required'.)


SECTION 250 -
YOU HAVE USED THE
PREMISES OR
PERMITTED THEIR
USE FOR A PURPOSE
ILLEGAL AT COMMON
LAW

- 10 This notice is delivered to the tenant

☒ by hand ☐ by registered post

on this date 01 / 05 / 09

- 11 Signature of landlord, owner, mortgagee or agent



- 12 Name of landlord, owner, mortgagee or agent signing the notice (include the name of the estate agency where applicable)

RICHARD TONKIN

- 13 Tenant please note: If you receive a notice to vacate, you may apply to the Victorian Civil and Administrative Tribunal to challenge the validity of the notice. An application must be made to the Tribunal within 30 days after the notice to vacate was given.

The issues: procedure

- Application for possession?
 - **Important** - VCAT file
- Hearing date?
- Notice to vacate – problems?
 - Service?
 - Jurisdiction? (notice reasons?)

Tenant rights: Issues

- Right of entry
- Breach of duty
- Other - discrimination?

Notice for Breach of Duty to landlord of rented premises

From the tenant

Landlord details

1 This notice is given to (landlord/s names)

Richard Tonkin

2 Landlord's address (can be an agent's)

6/85 Albert St
Carlton Vic 3053.

Tenant details

3 Tenant name/s

Kate Hepburn.

4 Regarding the rented premises at (write address)

7/85 Albert St
Carlton Vic 3053.

5 Address for serving documents
(if the same as in 4, write "as above")

as above.

6 Contact telephone numbers

() BH (03) 95571231 AH

Service details

7 This notice is given

- ☐ by hand
☒ by registered post
☐ by ordinary post

on (date) 2 10 5 12 009

8 Signature of tenant

K. Hepburn

9 Name of tenant signing this notice

Kate Hepburn

Reason for breach of duty notice

10 I believe you have breached your duty as a landlord because (write the section number and words from the opposite page)

567 - I am not allowed quiet enjoyment. because you:
- spy on me
- verbally harass me
- forced your way into my house

11 The loss or damage caused is

Your harassment has reduced my use of the premises. I feel I have no ~~enjoying~~ privacy and increased anxiety

12 Compensation or compliance required

I require you to remedy the breach within 14 days after receiving this notice by

- stopping harassing me and especially entering without notice

or pay me \$ compensation

13 You must not commit a similar breach again. If you do not comply with this notice:

- the tenant may apply to the Victorian Civil and Administrative Tribunal for a compensation or compliance order, or
- if S240 applies, the tenant may give you notice of intention to vacate.

14 Details are attached to this notice
(eg receipts, other evidence)

☐ yes ☐ no

Landlord please note

If you want help with this notice, then ring the Consumer Affairs Helpline on 1300 55 81 81 or visit the Victorian Consumer & Business Centre at 113 Exhibition Street Melbourne.

The Hearing (1)

Can you appear?

- Possession order
- Other
- Request reasons
 - **Important** for appeal
 - at time of hearing

The Hearing (2)

- Appeal?
- Error of law, NOT error of fact
 - Need reasons
 - Need transcript (only King Street)
 - No later than 28 days after VCAT decision
 - Apply for stay of VCAT decision (warrant)

Case study 2: instructions

- Cops just came around and said “get out”
- They said they had a warrant.
- They’ve given me till tomorrow, but where am I gonna go ?
- There was supposed to be a hearing, but I thought everything was sorted. The agent told me not to worry about it and I didn’t go.

Instructions (2)

- Health issues
- Boyfriend didn't pay rent
- Paid off \$400, discussion with agent
- VCAT notice, agent comments
- Extra payments
- VCAT order – confused, agent(??)
- Another missed payment, money problems

Possession order

- Police are at the door!

ORDER Ref No: F

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
RESIDENTIAL TENANCIES LIST
REGISTER OF PROCEEDINGS

APPLICANT(S):
Landlord

RESPONDENT(S):
Tenant

RENTED PREMISES:
Application under *Residential Tenancies Act 1997* possession - assignment or sub-letting without consent
Section 322(1), 253.

The Tribunal finds that:

1. The landlord gave the tenant not less than 14 days' notice to vacate under section 253 of the *Residential Tenancies Act 1997*.
2. The landlord has proven the grounds for giving the notice to vacate.

The Tribunal orders and directs that:

1. The landlord is entitled to a possession order.
2. The tenant must vacate the rented premises by .
3. The principal registrar, at the request of the person who obtained the possession order and on payment of the prescribed fee, shall issue a warrant of possession to be executed within 14 days after the date of issue. (Any request must be made no later than .)

Warning to tenant: If you fail to vacate the rented premises by the date stated in this order you may be forcibly vacated by a member of the police force or an authorised person carrying out a warrant of possession.

E. A. Kaminis
E A Kaminis

No appearance by or on behalf of the tenant at hearing scheduled at 02:00 PM on .

Issues

- Did not appear?
 - Review?
 - Time - 14 days of becoming aware

ORDER

Ref No: R.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL RESIDENTIAL TENANCIES LIST REGISTER OF PROCEEDINGS

APPLICANT(S):
Landlord

RESPONDENT(S):
Tenant

RENTED PREMISES:

Application under *Victorian Civil & Administrative Tribunal Act 1998* review of tribunal order and if granted immediately re-open Section 120

On hearing the evidence of the tenant -

The Tribunal finds that:

The tenant applied for review within 14 days after becoming aware of the Tribunal's order dated 2 and had a reasonable excuse for not attending or being represented at the hearing

The Tribunal orders and directs that:

1. The application for review is granted and the order dated : is suspended pending a further hearing of the proceeding by the Tribunal now.
1. The parties shall comply with the tenancy agreement and the *Residential Tenancies Act 1997* pending the further hearing.
2. The warrant of possession issued by the principal registrar on is extended until the further hearing and suspended until then.
3. The principal registrar shall serve a copy of this order and notice of hearing on the parties by the most expeditious method and send by facsimile transmission a copy to the police identified in the warrant.

G.H.



D. O'Halloran, Member

Get out of jail!

- Adjournments
- Section 331 of the RTA

ORDER

Ref No: R2009.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL RESIDENTIAL TENANCIES LIST REGISTER OF PROCEEDINGS

APPLICANT(S):
Landlord

RESPONDENT(S):
Tenant

RENTED PREMISES:

BOND NUMBER(S):

Application under *Residential Tenancies Act* 1997 possession and rent Section 322(1),246

The Tribunal finds that:

1. The landlord gave the tenant not less than 14 days' notice to vacate when the tenant owed at least 14 days' rent.
2. The rent, which is \$290.00 per fortnight, is paid to and the rent owed to today is \$1872.00.
3. The bond is \$550.00.

The Tribunal considers that satisfactory arrangements have been made to avoid financial loss to the landlord.

The Tribunal orders by consent that:

1. The tenant shall pay the landlord rent together with \$60.00 per fortnight commencing on 20 July 2009 until the rent owed is fully paid and rent is paid in advance.
2. The tenant shall then continue to pay rent in advance.
3. The application is adjourned to a date no later than 31 December 2010 to be heard by any Member of the Victorian Civil and Administrative Tribunal. The application may be renewed by the landlord giving the principal registrar notice in writing but if the application is not renewed on or before this date it shall be considered withdrawn.

H. Lambrick

H.Lambrick, Senior Member



Further Information

Homeless Persons' Legal Clinic
Level 17, 461 Bourke Street
Melbourne VIC 3000
HPLC Manager – Caro Adler