

# Tenancy Breaches Policy

## 1. Policy Statement

Uniting Vic.Tas (Uniting) provides tenancy and asset management services for community housing to Uniting Housing Victoria (Uniting Housing), a Registered Housing Provider.

The purpose of this policy is to set out the circumstances which may lead to a tenancy breach action against a renter.

## 2. Scope

This policy applies to all housing arrangements managed under the *Residential Tenancies Act 1997* which include, but are not limited to, tenancies in:

- Properties owned by Uniting Housing and Uniting Vic.Tas for use as long-term community housing;
- Properties leased by Uniting Housing from Homes Victoria for long term community housing;
- Rooming Houses;
- Properties managed under the Transitional Housing Management (THM) program, the From Homelessness to a Home (H2H) program and the Homes for Families program;
- Retirement village units rented to persons under the Residential Tenancies Act 1997; and
- Properties managed as Affordable Housing, including properties under the National Rental Affordability Scheme.

This policy covers tenancy breaches in accord with the legal requirements of the *Residential Tenancies Act 1997*.

## 3. Policy

### 3.1. Guiding principles

Uniting is committed to:

- Facilitating sustainable tenancies and working collaboratively with renters and support agencies to prevent a tenancy from failing
- Fostering a safe and secure living environment for all renters
- Working within the framework of human rights set out in the *Charter of Human Rights and Responsibilities 2006*
- Operating with procedural fairness

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- Responding to complaints and concerns about nuisance behaviour to ensure the safety and wellbeing of all renters and the community

In applying this policy Uniting will ensure:

- Consistent, fair and accountable processes are followed and renters will be provided information about processes that impact their tenancies.
- Decision making is person-centred and tenancies are sustained wherever possible.
- Where tenancies are at risk, intervention will occur as early as possible to attempt to rectify any issues.
- Eviction is a measure of last resort.
- Proper consideration is given to the human rights of renters that may be impacted by decisions around evictions.
- All our legal, regulatory and contractual duties are met.

#### 4. Types of tenancy breaches

Rent providers and renters each have clear obligations and responsibilities under the *Residential Tenancies Act 1997*. The residential rental agreement, signed by both renter and rental provider at the start of the tenancy, sets out each party’s obligations.

Tenancy breaches by a renter might occur in relation to:

- Overdue rent
- Intentionally or recklessly causing serious damage to the property
- Threatening or intimidating behaviour to Uniting or its agents
- Using, or allowing others to use the property for an illegal purpose
- Assigning or subletting the property without approval

Tenancy breaches can be reported from a range of sources (including Uniting staff and contractors, neighbours, police). Uniting staff will gather evidence and comprehensively record information provided in relation to an alleged breach. Thorough notes will be recorded on the tenancy record in the Chintaro system.

In all cases Uniting will:

- act in compliance with the requirements of the *Residential Tenancies Act 1997*.
- sustain tenancies where possible through positive renter support and early intervention.
- acknowledge the role of extenuating circumstances and hardship in a renter’s ability to sustain their tenancy;
- facilitate access to support to agencies or advocates (Uniting or external) where it is identified that such a referral may assist the renter to maintain the tenancy; and
- uphold the rights of renters to have safe and secure accommodation.

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If the alleged breach is classified as an **incident** the matter is recorded on the RiskMan Incident Reporting and Management System. An **incident** is defined as “**an event or circumstance that results in harm, injury, illness, damage or loss to client, employee, contractor, volunteer and/or visitor and/or property**”.

#### 4.1. Nuisance behaviour

Nuisance behaviour is defined as any activity carried out by the renter or visitors inside the rented premises that is a nuisance to neighbours.

Many breaches under this section relate to excessive noise or continuous noise, or noise at unusual hours of the day or night. The EPA provide information and guidelines to noise and when it can be made.

Other forms of nuisance behaviour can include:

- Accumulation of rubbish or inappropriate dumping of rubbish
- Unregistered vehicles on site
- Noise and/or unhygienic conditions for animals

#### 4.2. Malicious damage

Malicious damage is defined as intentionally damaging or negligently causing damage to the property. Damage can mean defacing, marking, removing a fixed object or safety feature or causing it to be broken.

For a Notice to Vacate to be served in relation to malicious damage, the conduct or omission that is the cause of malicious damage must be current and continuing at the date the notice to vacate is served. The source or cause of the damage must also be substantiated. Malicious damage does not mean any fair wear and tear caused by the renter.

#### 4.3. Dangerous behaviour and serious acts of violence

Dangerous behaviour or serious acts of violence directed towards neighbours, others on the premises or the rental provider or rental providers agent, are classed as behaviours warranting an immediate response.

In these instances, Uniting will issue a Notice to Vacate and immediately apply to VCAT for possession of the rented premises.

Eviction is treated as the option of last resort and aims to avoid eviction of renters by providing early intervention and referring renters at risk of losing their tenancy to appropriate support services. Where a serious act of violence has occurred, Uniting will assess any ongoing danger to others and what other measures are available to mitigate those risks that are less restrictive than eviction.

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#### 4.4. Threats and intimidation

Intimidation can refer to any act that creates fear of physical or mental harm and can include physical as well as non-physical acts such as yelling, screaming, ridiculing, insulting as well as hostile physical posturing. It can also include threats of future harm.

A tenancy breach can relate to any serious threats or intimidation against the rental provider or the provider's agent or their contractor or employees.

#### 4.5. Illegal use

Illegal use is defined as the renter having used the rented premises or permitted use of their premises for any purpose that is illegal at common law or under an Act.

Under the Residential Tenancies Act a connection is required between the illegal use and the property. The property needs to be directly linked to the illegal behaviour and cannot just be where the renter has resided during the time they committed a crime.

## 5. Actions in response to tenancy breaches

### 5.1. Investigation and substantiation

The alleged breach will be investigated to establish the facts of the situation. The investigation process will ensure a renter's human rights are upheld and procedural fairness is followed, through the stages:

1. Uniting is made aware of an alleged breach
2. Uniting investigates the alleged breach and gather additional information
3. The renter is provided with an opportunity to respond to an alleged breach
4. Uniting undertakes a human rights assessment of potential action against the renter in line with the **Ending Tenancies policy**
5. The renter is notified in writing that the breach has been **unsubstantiated** or **substantiated** and, in the latter case, advise of a breach notice or action taken under the Residential Tenancies Act.

### 5.2. Breach of duty notices

Breach of duty notices are issued when a complaint has been substantiated and a breach of the RTA has occurred. The notice is a formal warning saying that the renter has not met their obligations under the RTA. A notice provides a timeframe for the renter to rectify any breach, if the breach is not addressed by the renter Uniting can apply to VCAT for a compliance or compensation order.

Where a renter has breached the same duty provision three times, Uniting may issue a Notice to Vacate (NTV) on the third breach of that duty.

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### 5.3. Compliance order

When a breach notice is not being complied with, Uniting will make an application to VCAT for a compliance order (on approval of the Senior Manager Housing Services).

A compliance order is a way of forcibly having a renter comply with their duties under the Residential Tenancies Act.

### 5.4. Notices to vacate

There are different notices to vacate based on the type of duty that has been breached:

- an immediate notice to vacate will be issued when a breach has occurred under danger, or if the damage to a property is severe; or
- a 14-day Notice to Vacate is issued when a compliance order is not adhered to, when there have been successive breaches, threat or intimidation, or illegal purposes.
- a Notice to Vacate can be issued for failure to comply with a VCAT Compliance Order – this is where the renter has unreasonably refused to do what the Compliance Order states.

Notices that are not complied with may result in Uniting seeking a Possession Order from VCAT, following the **Ending Tenancies Policy**.

### 5.5. Charter of Human Rights and Responsibilities

Uniting is required to consider the potential impact of any proposed action on the renter’s (and their households) rights under the *Charter of Human Rights and Responsibilities Act 2006* .

In a human rights approach, Uniting will ensure renters are at the centre of all decisions made. It does not mean that a renter’s rights can never be limited; it means that any decisions made that do limit a renter’s humans right must be lawful, necessary, reasonable and proportionate.

Uniting staff taking action in line with this policy must:

- Understand the objective and rationale of the actions they are taking
- Consider the impact of a proposed action on the persons Charter rights
- Consider whether the proposed impact is balanced, proportionate and necessary to achieve the objectives of the organisation
- Choose the least restrictive measure available

### 5.6. Procedural fairness

Uniting will act fairly when making decisions that impact a renter’s rights.

To ensure procedural fairness, Uniting will:

- Notify the renter, either in writing or verbally, of the nature of the alleged breach that may result in a notice or action taken by Uniting

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- Inform the renter of information and evidence gathered that will be used in the making of the decision in relation to their tenancy.
- Provide the renter with an opportunity to refute the alleged breach or provide a response to the alleged breach, including reasons why a notice should not be issued and allowing the renter to provide supporting evidence.
- Fairly consider any material or information provided by the renter when making a decision.
- Where family violence is identified, any assessment will be trauma informed and align with MARAM and not further disadvantage victim-survivors.

## 6. Definitions

Term	Meaning
<b>Breach of duty</b>	Failure to meet a requirement of the RTA that is classed as a duty provision (a provision which has specific legislative requirements and consequences for either a rental provider or a renter).
<b>Breach of duty notice</b>	A notice served on a resident or landlord to inform them that their behaviour has caused them to breach one of more of the duty provisions of the Residential Tenancy Act.
<b>Compliance order</b>	A legal order issued by VCAT directing a party to restrain any action in breach of the tenancy agreement or the RTA or require any action in the performance of a tenancy agreement or of duties under the RTA.
<b>Charter of Human Rights and Responsibilities</b>	A Victorian law that sets out the basic rights, freedoms, and responsibilities of all people in Victoria - <a href="https://www.humanrights.vic.gov.au/for-individuals/human-rights/">https://www.humanrights.vic.gov.au/for-individuals/human-rights/</a>
<b>Eviction</b>	Removal of renter from a property, as authorised by a Warrant of Possession issued by VCAT.
<b>MARAM</b>	Family Violence Multi-Agency Risk Assessment and Management Framework – process for ensuring effective identification, assessment, and management of family violence risk.
<b>Notice to Vacate</b>	A legal notice telling a renter that the rental provider wants them to vacate the property by a certain date.
<b>Possession order</b>	An order granted by VCAT giving the landlord the right to obtain a warrant to regain possession of the property.

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Term	Meaning
<b>Procedural fairness</b>	Fairness of the procedure or process by which a decision is made.
<b>Residential Rental Agreement</b>	Legal agreement between a rental provider (landlord) and renter (tenant) to rent a home.
<b>VCAT</b>	Victorian Civil & Administrative Tribunal. A legal institution set up to administer several Acts. For residential tenancies, the Tribunal administers the Residential Tenancies Act 1997.

## 7. Transparency and accessibility

This policy will be available on the Uniting Housing and Uniting Vic. Tas websites.

This policy will be fully reviewed within 3 years of the approval date.

If you require this policy in a language other than English, or in accessible format please contact Uniting.

## 8. Legislation/Regulations

This policy implements the obligations of Uniting under:

- *Housing Act 1983*
- *Residential Tenancies Act 1997*
- *Residential Tenancies Regulations 2021*
- *Charter of Human Rights and Responsibilities 2006*
- Victorian Housing Registrar Performance Standards
- Service Level Agreement between Uniting Vic Tas and Uniting Housing

## 9. Related Documents

Ending Tenancies Policy and Procedure  
 Tenancy Breaches procedure  
 Sustaining Tenancies policy and Procedure  
 Rent Arrears Policy and Procedure

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