

Important Renting Information for Natural Disaster Victims

As a tenant or lessor (landlord) it is vital to know what your renting rights and responsibilities are if you've been affected by a natural disaster, such as a tropical cyclone. This information sheet provides important details about what tenants and lessors can and can't do under the *Residential Tenancies Act 1994* if their rental property is damaged or non-livable.

Can I terminate my tenancy agreement?

The *Residential Tenancies Act 1994* only allows tenancy agreements to end by:

- written agreement between the lessor/agent and tenant; or
- if the lessor/agent gives a tenant a *Notice to Leave* (Form 12) and the tenant hands over vacant possession of the premises; or
- the tenant gives the lessor/agent a *Notice of Intention to Leave* (Form 13) and the tenant hands over vacant possession; or
- a tribunal makes an order terminating the agreement; or
- the tenant abandons the premises.

Does the tenancy agreement end if the property has become non-livable?

A tenancy agreement does not automatically end where the premises are rendered non-livable. If the premises become non-livable, either the lessor/agent or the tenant can issue the other party with a *Notice to Leave* (Form 12) or *Notice of Intention to Leave* (Form 13) on the grounds of non-livability, but must do so within four weeks of the event that made the premises non-livable.

What's a non-livable property?

Non-livability is determined where the premises:

- have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the agreement; or

- no longer may be used lawfully as a residence. The agreement ends the day the notice is given.

What can a tenant do if they don't think the property is non-livable and they want to stay?

If the tenant believes the premises are still livable and wants to stay, they can dispute the grounds by lodging a *Dispute Resolution Request* (Form 16) with the RTA as soon as possible.

What does a lessor do if the property is non-livable but the tenant doesn't want to leave?

If the tenant doesn't leave the premises, the lessor/agent can apply to the Tribunal for an order because of a failure to leave under the grounds of non-livability. The lessor/agent may need to provide evidence to the Tribunal for the grounds of the application.

What are the lessor's obligations if the property has been damaged?

The lessor has an obligation to maintain the premises so that they are fit to live in, are in good repair and comply with any law about health and safety. Lessors may need to negotiate entry to the premises for the repairs to be done. Entry can be at any time by mutual agreement, or by serving an *Entry Notice* (Form 9), giving appropriate notice.

The property is damaged but the tenant wants to stay. Can they get a rent reduction?

In some cases, tenants can negotiate a rent reduction if the premises have been affected. This can be achieved through negotiation between the lessor/agent and tenant, or with the assistance of the RTA's Dispute Resolution Service. If necessary, the tenant can apply to the Tribunal for a rent reduction.

The rent decrease provisions apply if the premises:

- are destroyed, or made completely or partly unfit to live in, in a way that does not result from a breach of the agreement; or
- no longer may be used lawfully as a residence; or
- services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than because the tenant failed to meet the tenant's obligations under the agreement; or
- the amenity or standard of the premises decreases substantially, other than because of malicious damage caused by the tenant.

The amount of the rent decrease can be negotiated between the parties, or the Tribunal can order the amount of rent decrease. The Tribunal can only make an order for a rent decrease if the tenant applies for the order on the grounds the premises are partly unfit to live in.

What if a tenant wants to vacate the premises while they are non-livable, but return after the premises have been repaired?

There may be situations where the tenant wants to return to the premises after the property has been repaired, but wants obligations for rent to be waived during this period. The tenant can negotiate these arrangements with the lessor/agent directly, or with the assistance of either the local Tenant Advice and Advocacy Service worker or the RTA's Dispute Resolution Service if an agreement cannot be reached.

Both parties can also decide to formally terminate the agreement (as outlined above) and re-sign a new agreement after the repairs are complete. However, increased rent can be included in a new agreement.

Can the rent be increased in an existing tenancy?

Rent can only be increased during a tenancy as set out in the tenancy agreement. If the agreement is a fixed term agreement with an end date, rent can only be increased if the agreement provides for the increase and one month's notice has been given. If the agreement is a periodic agreement

with no end date, rent can only be increased after giving two months' notice.

If the tenant considers the increase is excessive, they can apply to the Tribunal for the increase to be reduced or set aside. The Act sets out the criteria the Tribunal must consider in deciding whether the increase is excessive.

For a new tenancy, rent is negotiated between parties before the agreement is signed.

Can I be evicted to make way for a new tenant who will pay higher rent?

It is an offence with heavy penalties to evict a tenant in a way that does not comply with the *Residential Tenancies Act 1994*. If there is a breach of the agreement, the tenant must be given an opportunity to remedy the breach and the Act sets out processes which must be followed to evict a tenant. If there has not been any breach, the lessor must give two months' notice to end the tenancy without grounds if the tenancy is periodic, but cannot end a fixed term agreement before the end date specified in the agreement.

Further Information

For more information about the *Residential Tenancies Act 1994*, contact the RTA.

Accessing RTA forms

The RTA's approved forms can be obtained by:

- Visiting the RTA's website at www.rta.qld.gov.au and following the links to "e-forms"
- Calling the RTA's call centre on 1300 366 311
- Visiting the RTA offices at 33 Herschel St, Brisbane
- Fax a *Request for Forms* to 3216 2258

A selection of the most commonly used forms is also available at Australia Post offices around Queensland.

Disclaimer

The Residential Tenancies Act 1994 is the primary source material on the law and takes precedence over this Fact Sheet should there be any inconsistency between the Act and this Fact Sheet.

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