



Ending Tenancy Policy

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1. Purpose

To document Eastern Suburbs Rental Housing Co-operative's (ESRHC) policy for dealing with voluntary and forced termination of tenancies.

2. Basis for Policy

The Residential Tenancies Act 1997 provides that tenancy agreements can only be ended in ways that are legal under the Act.

3. Policy

Tenancies can end in a number of ways; each has its own issues.

3.1 Where the tenant gives notice

- The required minimum amount of notice a member/tenant should give the ESRHC is 28 days;
- Notice should be given in writing;
- The removal and restoration of any items or fixtures added by the tenant should be completed by the tenant before the final inspection (particularly items no longer working or that the ESRHC does not want);

- Rent is payable until the day all keys to the property (i.e. doors, security doors, windows, sheds, gates and garages) are returned;
- The ESRHC and the departing tenant should negotiate when and how the keys are returned (preferably at the final inspection and in person).

The Final Inspection

- A final inspection should be arranged, ideally with the departing tenant present;
- The Maintenance and Administration Co-ordinator should conduct the final inspection and have available the original Condition Report and the most recent Inspection Report;
- The inspection should cover all aspects of the property – including floor coverings, doors, exhaust fans, range-hood, stove & oven, walls, curtains, cupboards, windows & screens, heaters, air conditioner/s (if applicable, bathroom/s, laundry and toilets, garages and any other out-buildings);
- In particular check for damage if pets have been kept inside (fleas in the carpet, scratch-marks on doors and walls, soiling of the floor coverings etc.) (See: Pet Policy in Annexure to Tenancy Lease).

3.2 Where the tenancy has been ended by VCAT action

- This usually occurs where the tenant has rent arrears and the Victorian Civil and Administration Tribunal (VCAT) has awarded the ESRHC vacant possession;
- Usually the order is for immediate vacant possession, but the Court may grant a short period of notice (typically 14 days) for the tenant to move out or if a warrant is to be executed;
- The ESRHC may apply for compensation for damages or costs incurred if necessary.

The notes regarding Final Inspection above also apply in this situation.

ESRHC considers eviction to be a last resort. All reasonable attempts will be made to sustain a tenant's tenancy. ESRHC will endeavour to resolve rent arrears with individual tenants before seeking action through VCAT. (Refer Rent Arrears Policy).

3.3 Where the tenant has abandoned the property (and not advised the ESRHC)

- Refer to Consumer Affairs Victoria Booklet "Renting a Home – A Guide for Tenants and Landlords", Part 4, "Belongings Left Behind".

3.4 Where the tenant has passed away

- Section 228 of the Residential Tenancies Act sets out the time line for the termination of a tenancy after the death of a tenant as follows:

228. Termination after notice of death of (sole) tenant

(1) If a tenant dies, the tenancy agreement terminates at the earliest of the following dates-

(a) 28 days after the landlord has been given written notice of the death of the tenant by the legal personal representative or next of kin of the tenant; or

(b) 28 days after the landlord has given a notice to vacate to the legal personal representative or next of kin of the tenant; or

(c) a date agreed in writing between the landlord and the legal personal representative or next of kin of the tenant; or

(d) the date determined as the termination date of the tenancy agreement by the Tribunal on the application of the landlord under sub-section (2).

(2) If a landlord is unable to give notice to vacate under subsection (1)(b), the landlord may apply to the Tribunal for an order to terminate the tenancy.

(3) This section does not apply if there is more than one tenant under the tenancy agreement.

- Note that Rule 22 of the Co-operative Rules provides that the deceased member's share in the Co-operative MUST be transferred to the executor or administrator of the deceased person. Despite this Rule and the provisions of the Act, there is no value in the shareholding and the holder of a share is not entitled to membership of the Co-operative.

3.5 Where the house has been condemned

- If a property has been condemned or declared unfit to live in or destroyed, contact the ESRHC Manager immediately. Property Insurance may cover the costs of housing the displaced member/s until a replacement property is available.

3.6 Where the tenant has been incarcerated, hospitalised indefinitely (and is unable to return home) or placed in a nursing home

- Where a tenant is incarcerated, they may retain the tenancy for up to six months, on a fixed rent as determined by the Department of Health and Human Services' Policy and Procedure Manual.
- Where the tenant is unable to return to the property for health reasons, a mutually acceptable date for the house to be vacated should be negotiated.

3.7 Exit interviews

Where possible exit interviews should be conducted to ascertain the tenant's satisfaction with:

- The management of the Co-operative by the Board;
- The management functions performed by the Manager / staff;
- The property maintenance functions performed by the Maintenance Committee and tradespersons; and
- To ascertain any complaints the tenant may have.