

# Fact sheet

Information on renting a house, unit, caravan or moveable dwelling

## Important Renting Information for Natural Disaster Victims

As a tenant or lessor/agent 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 Fact Sheet provides important details about what tenants and lessor/agents can and can not do under the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) if the rental property is damaged or non-livable.

### How can the tenant or lessor/agent end the tenancy agreement?

The Act only allows a tenancy agreement to be ended in the following ways:

- the lessor/agent and tenant both agree, in writing, for the agreement to end
- the lessor/agent gives the tenant a *Notice to Leave* (Form 12) or *Abandonment Termination Notice* (Form 15) to the tenant
- the tenant gives the lessor/agent a *Notice of Intention to Leave* (Form 13)
- the tenant is given a *Notice to Vacate from Mortgagee to Tenant* (Form 19) from a mortgagee (e.g. a bank) who is entitled to take possession of the premises
- the sole tenant has died and the tenancy must be ended, or
- the Tribunal makes an order.

### 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
- may no longer be used lawfully as a residence.

The agreement ends the day the notice is given.

### What if the tenant doesn't think the property is non-livable and wants to stay?

If the tenant believes the premises are still livable and wants to stay but has been given a *Notice to Leave* (Form 12) by the Lessor/agent, they can dispute the grounds by lodging a *Dispute Resolution Request* (Form 16) with the RTA as soon as possible.

### What can a lessor/agent 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.

## Can tenants get a rent reduction if the property is damaged and the tenants stay?

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 and re-sign a new agreement after the repairs are complete. However, increased rent can be included in a new agreement.

## Can a tenant 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 Act. 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/agent must give 2 months notice to end the tenancy without grounds, but cannot end a fixed term agreement before the end date specified in the agreement.

### Further information

For more information about the *Residential Tenancies and Rooming Accommodation Act 2008*, contact the RTA.

### Accessing RTA forms

The RTA's approved forms can be obtained by:

- visiting the RTA website at [www.rta.qld.gov.au](http://www.rta.qld.gov.au)
- calling the RTA on 1300 366 311
- faxing a *Request for Forms* to 3216 2258
- visiting the RTA offices at 33 Herschel St, Brisbane
- calling the RTA's Forms Distribution Service on 1300 136 939
- posting a *Request for Forms* to the Forms Distributor: Post Logistics, 52-54 Qantas Dr, Eagle Farm 4009.

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



**If you need interpreting assistance to help you understand this information, contact TIS on 13 14 50 (for the cost of a local call) and ask to speak to the Residential Tenancies Authority (RTA).**

### Disclaimer

*This Fact Sheet is prepared for information only. The Residential Tenancies and Rooming Accommodation Act 2008 is the primary source on the law and takes precedence over this information should there be any inconsistency between the Act and this Fact Sheet.*

July 2009  
Version 223.03