

# Tenants affected by a natural disaster

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

If you are renting and your personal items are damaged because of a natural disaster, you need your own insurance to cover your items.

## What happens if I leave because of a natural disaster?

Where the premises have been destroyed or made completely or partially unfit to live in because of flood, storms or bushfire, the lease does not automatically end. You should ask for a mutual termination of the lease. You should ensure that any mutual termination is in writing, highlighting the end to your financial obligations of the property.

If the owner or agent does not agree to a mutual termination, you may ask your local council to make an Order under the Public Health Act 1997, which will end the tenancy.

A tenant may serve a Notice to Terminate on the owner if, for example, the owner has not carried out repairs on the property within 28 days of receiving a Notice to Repair by the Residential Tenancy Commissioner.

The tenant can then leave the premises 14 days after service of the Notice to Terminate.

## What if the owner wants me to leave?

The owner of the premises can serve on you a Notice to Vacate if the tenancy is not for a fixed term and they wish to sell, renovate or use the premises for another purpose.

The Notice to Vacate takes effect 28 days after the owner has served the notice on you. If you are on a fixed term lease, then the owner cannot use this reason to get you to leave.

## What if I want to stay where I am living?

Where the owner has given you a Notice to Vacate and you want to stay, you can dispute the notice in court.

The owner will lodge the Notice to Vacate in court and a court date will be fixed for hearing the matter. You will be notified of the hearing date in writing. At the hearing you will be given the opportunity to put your case to the magistrate.

If you win, you can stay in the property. If you lose you will be told by the court when you must leave the property.

## Do I need to continue to pay rent?

A common question tenants have is do they have an obligation to continue paying rent whilst the property is uninhabitable. If the owner does not have insurance to cover the rent, or refuses to waive the rent, a tenant may have a claim in restitution against the owner. However,

in this circumstance, the tenant must keep paying rent until their claim is resolved in the Magistrates Court.

If the owner has contributed to or caused the damage by not maintaining or repairing the property prior to the disaster, a tenant may be able to claim the costs of having to vacate the property whilst it is uninhabitable as well as claiming rent. A tenant should ask their agent or owner to reimburse them for any reasonable costs, if this is refused, the tenant should lodge a claim against the owner in the Magistrates Court.

Any negotiations such as for reduced rent made between the tenant, owner and/or agent should be put in writing.

## Who pays for repairs?

If the premises is damaged, you must notify the owner or agent as soon as possible. The owner then has an obligation to repair the damage as soon as possible.

If the owner is unable to be contacted or fails to arrange for the carrying out of any repairs and the damage is likely to result in further damage to, or deterioration of, the premises you may authorise a nominated repairer, or if there is not one, a suitable repairer to repair the damage.

A nominated repairer is one that is nominated by the owner to make repairs to the premises.

A suitable repairer is a person who is licensed to undertake repairs to residential premises and ordinarily performs those repairs in the course of a business or as an employee of a business.

Any repairs that are made in this way are to be carried out only to the extent that is required to prevent further damage or deterioration of the premises. If you use a nominated repairer, then the owner must pay for the costs of repairs. If you decide to use a suitable repairer, then you must pay for the repairs, but you can get the owner to reimburse you.

## Who pays for cleaning needed because of flood or fire damage?

When the premises are dirty because of flood or fire damage, the owner is responsible for cleaning the premises and inclusions. The owner has a responsibility to maintain the premises, apart from reasonable wear and tear.

You are responsible for cleaning your goods and possessions. If you are moving out, ensure that you clean and remove your possessions. You are not responsible for cleaning flood or fire damage. If there are parts of the property that are not damaged and which you can reasonably access, you should return these to the condition you received them in except for fair wear and tear.

## What happens with my bond?

All bonds must be managed online through MyBond. If you were a pre-existing tenant prior to 1 May 2019, you will already be registered in MyBond. You can login using your email or phone number or contact the Rental Services team on 1300 654 499 if you need help. You will need your Tenant ID or Bond Number prior to calling which can be obtained from your property Agent or property owner.

An owner or agent must start a claim within 3 working days of the tenant returning the keys. The tenant will then receive a claim notification from MyBond which can be approved or disputed.

If the owner or agent has not made a claim within 3 working days, the tenant can then apply to have their bond returned. If the owner or agent does not dispute this claim, the bond will automatically be paid to the tenant 14 days after it was claimed.

If you cannot agree with the owner or agent about the bond, you can dispute this through MyBond. For information on how to do this go to [Disputing a bond claim](#). For more information on claiming a bond go to [Claiming a bond](#).

The Rental Deposit Authority (the RDA) will refund the bond to you if bank account details have been provided in MyBond. If you don't have access to MyBond, you can provide your bank account details directly to the RDA by calling 1300 654 499. When a payment is made, allow 3 – 5 days for bank processing times.

## Can I get any general compensation?

Compensation is not available for losses caused solely by flood or storm damage. However, if the owner/agent:

- was notified of a repair issue prior to an act of nature occurring; and
- failed to repair within the permitted time stated in the notice (or, if no time is stated in the notice, within a reasonable time) and the failure to repair caused the tenant to make a loss/make further losses;

you may be able to claim compensation against the owner/agent.

## Where do I go for more information?

### **Tenants Union of Tasmania**

Toll Free 1300 652 641

### **Hobart Community Legal Service**

Phone 6223 2500

### **Launceston Community Legal Centre**

Freeccal 1800 066 019

### **North West Community Legal Service**

Phone: 6424 8720

### **Consumer Affairs and Fair Trading**

Phone 1300 654 499

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.