

# Ending Tenancies and Evictions Policy

REVISION NO. 1.0

ISSUED 01/01/2024

Our vision is that **Aboriginal Victorians secure appropriate, affordable housing as a pathway to better lives and stronger communities**. We believe that achievement of our vision is through the provision of housing services which enhance the dignity of our clients and tenants and which respects and celebrates their cultural beliefs, values and practices.

Our policies and procedures are designed so that our practice and service delivery is in accord with this cultural statement.

## 1 Policy Objectives

This policy outlines Aboriginal Housing Victoria's (AHV) approach to ending tenancies including evictions of tenants and/or residents from properties managed by Aboriginal Housing Victoria (AHV).

## 2 Scope

This policy applies to all social housing properties owned or managed by AHV.

## 3 Guiding Principles

In applying this policy AHV will ensure:

- Eviction is a measure of last resort.
- Decision making is person-centred, and tenancies are sustained wherever possible.
- Where tenancies are at risk, intervention and referrals to appropriate services will occur as early as possible to attempt to rectify any issues.
- Proper consideration is given to the human rights of renters under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (Charter) that may be impacted by decisions around evictions.

- A commitment to respond to matters that may be family violence related that is trauma informed and aligns with the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM).
- Consistent, fair, and accountable processes are followed, and renters will be provided information about processes that impact their tenancies.
- All our legal, regulatory, and contractual duties are met.

## 4 Renter Initiated

Renters may initiate termination of their rental agreement when they give written notice of their intention to vacate the rented premises.

Renters are required to provide written notice of their intention to vacate however they are not required to provide 28 days' notice as per the RTA.

AHV will request information from renters on their reason for ending the tenancy and use this information to inform service improvements and to provide appropriate support referrals where necessary.

AHV will inform renters of their responsibilities when ending their tenancy:

- The keys must be returned to AHV on or before the last day of the tenancy
- Renters must remove all belongings from the property
- The property should be left in a clean and tidy state
- Renters must resolve all outstanding rental arrears if applicable

Renters will be given a reasonable opportunity to attend the final inspection. An exit condition report will be completed from this inspection and provided to the renter.

### 4.1 Abandonment

Abandonment occurs where a household leaves a property empty or uninhabited, without intending to return.

Where a tenancy is suspected of being abandoned AHV will investigate, which may include:

- Several unsuccessful attempts to contact the renter or household members
- Checking if rental payments have stopped
- Visual external inspection (long grass, uncollected mail, no electricity use detected at meter)
- Attempts to contact next of kin and/or support worker
- Sending a notice of entry and inspecting the property internally

Where AHV determines that a property has been abandoned, an application will be made to VCAT seeking an order declaring the property to be abandoned and gain possession of the property.

Where the renter has confirmed that they have abandoned the property or AHV has otherwise confirmed that the renter will not be returning to the property, and there is no one else residing in the property, AHV may take possession without applying to VCAT.

Any goods left behind will be stored or disposed of in line with Consumer Affairs Victoria direction.

## 4.2 Death of a sole renter

Where there is a death of a renter for a sole tenancy, AHV will make arrangements with the next of kin or legal representative for termination of the rental agreement and collection of all goods left at the property.

Where other household member/s reside at the property and wish to remain living in the property but are not parties to the rental agreement, their requests will be considered in line with AHV's Tenancy Transfer and Property Relocation Policy.

If a next of kin or legal personal representative is not listed, or not contactable, AHV will apply to VCAT to end the rental agreement, which requires evidence of the death of the renter.

The rental agreement is terminated on the earliest date of the following:

- The date the renter passed as advised in the Death Notice
- A date agreed in writing between AHV and deceased renter's next of kin or personal representative.
- The date on the "Termination after Death of a Sole Renter Notice" given by AHV to the next of kin or personal representative.
- The date on the Notice of Intention to Vacate form given by the next of kin or personal representative to AHV
- A date determined by VCAT

Where there was a death of a sole renter within the home, AHV will work with the relevant organisation in the area to organise a cleansing of the property before a new renter is offered the home.

### 4.2.1 Credit balances on deceased sole renters' accounts

AHV recognises that in many instances, Aboriginal people may not make a Will, and formal "deceased estates" may not be readily identifiable. In these circumstances, AHV will release credit balances as a contribution to funeral costs of the deceased sole renter and/or for the repatriation of the deceased renter's body to Country; preferably as a direct transfer to the funeral/service provider.

Should the deceased sole renter have a prepaid funeral plan, then the rental credit may be used for any expenses related to the funeral or burial of the deceased renter, including any reasonable costs associated with Sorry business.

If after payment of all funeral related expenses, there is a residual rent credit and the deceased renter has not left a Will, the credit will be distributed by AHV in accordance with the rules of intestacy.

## 4.3 Evictions

Where renters fail to uphold their obligations under their tenancy agreement and the Residential Tenancies Act, AHV will work with the renter/s to rectify any issues and assist them to secure access to the support services they may need to help them to sustain their tenancy. Further details on how specific issues will be responded to are outlined in the AHV Renter responsibility, dispute and resolution Policy and Arrears Policy.

Eviction is a measure of last resort and will only occur where:

- All alternative options have been explored with the renter/s;
- Suitable referrals have been made to support and advocacy services;
- The human rights of the renters under the Charter have been given proper consideration and the decision is compatible with obligations under the Charter;
- A consistent, fair and accountable process has been followed and the renter has been kept informed of this process; and
- The relevant actions and recommendation have been reviewed and approved by a senior decision maker.

A decision to apply to VCAT for a Possession Order requires written approval from the Manager Community Housing, or a more senior member of staff. The execution of a Warrant of Possession requires approval from both the Director of Aboriginal Housing Services and the CEO.

## 4.4 Human Rights

AHV staff will consider the potential impact of any proposed action on the renter's (and their households') rights under the Charter.

AHV will ensure that human rights are at the centre of all decisions made with respect to the tenancy. A renter's human rights are subject only to reasonable limitations under the law.

Decisions made by AHV that limit a renter's human rights must:

- be lawful, necessary, reasonable, and proportionate.
- consider the nature of the human rights and the importance of limitations upon it.
- ensure that any less restrictive actions reasonably available to AHV have been explored.

Relevant Charter rights include:

- Recognition and Equality before the law (s8).
- The right to protection from cruel, inhuman, or degrading treatment (s10)
- Privacy and Reputation (s13).
- Protection of families and children (s17).
- Right to protection of cultural rights (s19).

Further information on each of these rights is available from the [Victorian Equal Opportunity and Human Rights Commission](#).

Staff acting 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 renter/s' 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.

As part of the process for obtaining organisational approval to apply for a Possession Order, an assessment of the recommended action against rights of the renters under the Charter will be completed and documented and the renter and/or their advocate will be informed of the actions being considered.

The renter and/or their advocate will be provided an opportunity to respond and any alternative course of action to resolve the issue will be considered. The human rights assessment and any response from the renter and/or their advocate will be reviewed and considered by a senior decision maker prior to a decision being made.

If eviction is necessary, information about alternative housing options will be provided to renters prior to and at the time of eviction.

## 4.5 Procedural Fairness

Renters will be provided with adequate notice of any proposed actions or proceedings so that they are able to seek assistance where needed and to effectively consider and prepare their response.

To ensure procedural fairness, AHV staff 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 AHV.
- 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
- 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.

## 4.6 Property No Longer Available

Where a property is no longer available to be leased as social housing, AHV will inform the renter as soon as possible and assist the renter to transfer to a suitable alternative property where available.

Such circumstances may include:

- Properties becoming uninhabitable due to natural forcers (e.g. decay, fires or floods);
- Redevelopment of the property to upgrade or build additional social housing;
- Sale of the property; or
- Return of the property to the owner (where AHV leases the property from another party).

When a property is no longer available, AHV will issue the renter with the appropriate notice to vacate as per Consumer Affairs Victoria and work with the renter to identify alternative accommodation options. AHV may not offer alternative accommodation to the renter and their household where the cause of the property being uninhabitable is a direct cause of the actions of the household e.g. the renter or their household member deliberately caused the fire.

## 5 Relevant Documents

### 5.1 Policies and procedures

Related policies, procedures

Arrears Policy

Renter and Tenancy Transfer Policy

Renter responsibility, dispute and resolution

### 5.2 Legislation

Legislation, standards, guidelines

Housing Act 1983 (Victoria)

Performance standards for registered housing agencies 2015 (Victoria Housing Registrar)

Residential Tenancies Act 1997

VCAT Act 1998

Charter of Human Rights and Responsibilities 2006

Housing Act 1983

Family Violence Protection Act 2008

Performance Standards for Registered Housing Agencies (Housing Registrar)

Registered Agency Agreement between AHV and the Director of Housing relating to participation in the VHR

DHHS Victorian Housing Register Operational Guidelines

## Document control

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## Document history

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1	June 2023	AHV Board	New Policy	