



# Aboriginal Housing Victoria

## *Housing Services Manual*

### Chapter 6 – Termination of tenancies

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DOCUMENT CONTROL	
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## Chapter 6 -Termination of tenancies

- **terminating tenancies;**
- **deceased estates;**
- **abandoned properties;**
- **abandoned goods; and**
- **vacated accounts**

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## 6. Termination of tenancies - Policy and context

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### 6.1 Purpose

The purpose of this chapter is to outline the processes and services by which Aboriginal Housing Victoria (AHV) finalises the termination of the tenancy agreement between the tenant and AHV, where the tenant vacates the property or is deceased.

### 6.2 Scope

The policy applies to all AHV tenants and, where the sole tenant is deceased, the tenant's legal representative or next of kin.

### 6.3 Context

AHV aims to:

- provide appropriate, affordable and secure housing assistance for low-income Aboriginal people living in Victoria;
- wherever possible, support tenants to achieve housing stability and sustainable tenancies;
- terminate tenancies in a timely and fair manner when tenants vacate their properties, in accordance with AHV's responsibilities as a landlord under the *Residential Tenancies Act 1987 (RTA)*; and
- re-let properties as quickly as possible, given the demand for AHV housing from low income Aboriginal Victorians.

### 6.4. Cultural statement

The First Nations people of Australia have the oldest continuous cultures in the world. AHV celebrates and takes pride in the rich and spiritual culture, values and practices of Australia's First Nations people. We celebrate the significant contribution made by Aboriginal and Torres Strait Islander people and culture to the enrichment of Victorian society, and, we acknowledge and respect the special place of Victorian traditional owners as Victoria's First Nations peoples.

As an Aboriginal Community Organisation we acknowledge that our legitimacy is derived from the strong relationships we have with Victoria's Aboriginal communities and our success is through achievement of our shared vision and aspirations.

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.

## 6.5 Relevant legislative and regulation

- Residential Tenancies Act 1997
- Charter of Human Rights and Responsibilities 2006
- Housing Act 1983
- Family Violence Protection Act 2008
- Passports Act 1938

## 6.6 Organisational context

Relevant AHV values that underpin our application and waiting list management policies include:

**Respect and support** for Aboriginal identity and culture and for our tenants and stakeholders

**Integrity, trust and honesty** in all our business activities

**Collaborative relationships** with our community, tenants, government and stakeholders

**Kindness, compassion, courtesy and dignity** in our relationships with our clients, our stakeholders and with each other.

Relevant AHV strategic objectives are to:

- Provide efficient and effective housing services for Aboriginal people;
- Develop constructive and mutually beneficial partnerships and relationships with the housing, community and corporate sectors;
- Advocate for, influence and deliver improvements in Aboriginal housing and other outcomes;
- Maintain high standards of accountability, probity and transparency to tenants, clients, the Aboriginal community, government and the public.

## 6.7. Key stakeholders

- Current and former AHV tenants;
- Aboriginal Victorians waiting for AHV housing; and
- Aboriginal Victorians, Aboriginal organisations, other community organisations and government agencies that have an interest in the delivery and outcomes of this policy.

## 6.8 Other relevant contextual factors

AHV is part of the social/community housing sector in Victoria. The sector provides long-term, secure rental accommodation to low-middle income Victorians through a large and diverse range of

not-for-profit organisations. Community housing is highly regulated by government and as a social housing agency, AHV must comply with sector performance standards and demonstrate the capacity to manage a viable social housing business, including timely re-allocation of vacant properties.

## 6.9 Policy objectives

This policy aims to achieve the delivery of fair and responsive tenancy termination services at the end of a tenancy, so that former tenants are not charged rent after they vacate the property. AHV's capacity to terminate tenancies in a timely way is dependent on AHV receiving clear advice from tenants regarding their intention to vacate.

In some cases, occupants or residents may seek to assume responsibility for the tenancy, following the departure of the tenant. While AHV will endeavour to assist known residents of the household, the high demand for AHV housing requires AHV to be confident that residents have a legitimate claim to the tenancy and meet AHV eligibility criteria, including *AHV Housing size guidelines*.

Occupants may take the opportunity to move into the property prior to the finalisation of the termination of the tenancy, or may be given keys to the property prior to the tenant leaving the property. In these circumstances, AHV takes action at the Victorian Civil Administrative Tribunal (VCAT) to remove illegal occupants from AHV properties.

AHV also aims to identify abandoned properties in a timely manner and initiate prompt legal action to regain possession of the property, to enable the tenancy to be terminated and the property offered to the next applicant on the waiting list. Abandoned cars, goods and personal documents are identified and managed by AHV in accordance with the requirements of the RTA.

## 6.10 Responsibilities

Allocations Officer	Lead role in making offers and signing up new tenants
Board	Approves the policy, sets strategy, monitors policy implementation and performance, and, reviews policy when necessary
CEO with the Executive Management Group	Oversees and monitors policy implementation and approves procedures to implement the policy
Director of Operations	Administers the policy and ensures staff and contractors comply with the policy
Housing Officer	Provides information to current and prospective clients and tenancy management services to existing tenants.
Team Leader Tenancy	Day to day supervision and support to housing staff delivering tenancy management services.
Team Leader Client Services	Day to day supervision and support to housing staff delivering waiting list, allocations and maintenance compensation management services.

## 6.11 Definitions and acronyms

Aboriginal person	Aboriginal and Torres Strait Islander person
AHV	Aboriginal Housing Victoria

CEO	Chief Executive Officer
Consumer Affairs Victoria (CAV)	Victorian government consumer affairs regulator. Provides advice to AHV in relation to storage of goods left in vacant AHV properties by former tenants.
Director of Housing (DoH)	Director of Housing. The DoH is a body corporate created under the <i>Housing Act 1983</i> . The DoH is the owner of public housing stock in Victoria and provides indirect funding to housing agencies to deliver social housing services.
Eviction	The process of terminating a tenancy after a Warrant of Possession has been obtained. The Warrant of Possession is executed by the police.  AHV reluctantly initiates this action as a last resort only, when all other efforts to resolve the rental arrears and/or other tenancy breach issues with tenants, have failed.
<i>Housing Act 1983</i>	Victorian legislation governing the administration of social housing services, including the provision of housing stock and the financial framework for the social housing sector.
Legal action	Where AHV makes application to VCAT to seek a determination relating to rent arrears, TRMC or other tenancy breaches.
Legal agreement	A VCAT order directing the tenant to repay rental arrears in regular instalments.
Legal personal representative	A legal personal representative of the deceased sole tenant is the executor of the deceased tenant's will to whom probate is granted or if there is no will, the administrator to whom letters of administration have been granted.
Local agreement	A local agreement between AHV and a tenant to pay rental arrears or Tenant Responsibility Maintenance Compensation in instalments.
Next of kin	Family member identified by a tenant as their closest relative and who may act on their behalf.
Notice to vacate (NTV)	A legal notice to the tenant to vacate the rented premises, issued by a landlord under Part 6, subdivision 4 of the <i>Residential Tenancies Act 1997</i> .
Order for Possession (OP)	An order granted by VCAT giving the landlord the right to obtain a warrant to evict the occupants and regain possession of the property. The order is valid for a six month period.
<i>Residential Tenancies Act 1997</i> (RTA)	Victorian legislation that outlines the respective rights and responsibilities of tenants and landlords in Victoria and prescribes the general provisions and terms of tenancy agreements.
Residential Tenancy Agreement	An agreement signed between landlords and tenants at the commencement of the tenancy, which specifies terms and conditions in accordance with the RTA.
TRMC	Tenant responsibility maintenance compensation. Compensation sought by AHV in circumstances where tenants are responsible for damage to AHV properties.
VCAT	Victorian Civil and Administrative Tribunal. The jurisdiction that includes the Residential Tenancy List.
VCAT hearing	A proceeding conducted at VCAT involving the presentation of evidence. On the basis of this evidence, the VCAT Chairperson will make a determination on action to be taken by tenants and/or landlords to address tenancy related issues.
Warrant of Possession	A VCAT order authorising the police to terminate a tenancy and potentially evict tenants from a property, if they are still in residence.

## 6.12. Policy details – Terminating tenancies

AHV terminates a tenancy agreement and takes vacant possession of the rental property in the following circumstances:

- the tenant transfers to another AHV property;
- the tenant vacates the property to move elsewhere, eg. private rental or home ownership, and offers up vacant possession to AHV, by virtue of providing written confirmation of their intention to vacate and returning the keys to AHV;
- AHV obtains a VCAT Warrant of Possession and evicts the tenant;
- the tenant is deceased and there are no remaining household members eligible for a transfer of tenancy; and
  - the legal personal representative /next of kin offers up vacant possession; or
  - a Notice to Vacate (NTV) is served on the legal representative/next of kin and AHV obtains an Order for Possession at VCAT; or
  - where no legal representative/next of kin has been identified, and State Trustees are unable to assist, AHV applies to VCAT for an order to terminate the tenancy, and if required, reapplies to VCAT to obtain an Order of Possession.

Termination of a tenancy in the above circumstances renders the rented property free from occupation and free from any claim to right of possession by another party.

### 6.12.1 Notice of intention to vacate

AHV requires tenants to give written notice prior to vacating their property. Notice is given by completing a *'Tenant's General Notice of Termination'* form or by supplying the same information in writing to AHV. The tenant's written confirmation of termination is necessary for AHV to be certain that it is the tenant's intention to take this course of action. If keys are returned to AHV without the completion of a termination form, and the tenant cannot be contacted to confirm their intention to terminate the tenancy, AHV seeks an Order of Abandonment to ensure that AHV has legal possession of the property.

Section 235 of the RTA requires tenants to provide 28 days' notice in writing, prior to vacating. However, AHV recognises that tenants may experience situations where they are required to leave the property at short notice. While AHV prefers to receive 28 days' notice for re-allocation planning purposes, this is not a mandatory requirement.

The tenant remains responsible for the payment of rent up to the termination date.



### **6.12.2 Termination date**

The tenancy and rent charges are terminated on the day that vacant possession is confirmed, that is the date that the keys are returned and a '*Tenant's General Notice of Termination*' form completed.

If a tenant gives notice but later decides to stay in the property, the household is not obliged to vacate. In these circumstances, the tenant must contact AHV urgently to confirm their decision to withdraw their notice of intention to terminate the tenancy.

### **6.12.3 Terminating a joint tenancy**

Under the RTA, a joint tenant may terminate the tenancy and offer vacant possession of their property on behalf of other joint tenants.

AHV generally prefers all parties to a joint tenancy to sign the '*Tenant's General Notice of Termination*' form, to ensure that all joint tenants are in agreement that the household is vacating the property. However, AHV recognises that this may not be possible or practical in all instances.

If one tenant from a joint tenancy indicates her/his intention to terminate the tenancy and signs the '*Tenant's General Notice of Termination*' form on behalf of the household, AHV will make efforts to contact other joint tenants to confirm that it is their intention to terminate the tenancy. If the entire household does not wish to vacate the property, AHV will assess remaining residents and tenants for their eligibility, according to AHV *Transfers of tenancy* policy (see chapter 5 *Tenant initiated changes* for further details).

### **6.12.4 Requests for transfer of tenancy**

If a household member who is not a joint tenant indicates that s/he wishes to stay in the property after the tenant has vacated, AHV will assess their eligibility for a transfer of tenancy under AHV *Transfers of tenancy* policy.

If a transfer of tenancy is not approved in these circumstances, and the occupant(s) does not leave the property, AHV may take steps to terminate the tenancy and commence illegal occupancy proceedings at VCAT. Eviction of illegal occupants in these circumstances will be subject to the approval of the CEO and CEO's delegate (Director of Operations). The CEO and delegate also have the discretion to stop action to evict residents/occupants where such action may result in severe hardship for the occupants.

### **6.12.5 Removal of goods from the property**

It is the responsibility of the tenant to arrange removal of all goods from the property before returning the keys. AHV considers any goods left behind in the property after the termination of the tenancy to be abandoned.

As landlord, AHV deals with any abandoned goods according to the legal requirements of sections 384-393 of the RTA. Where the goods have some monetary value or AHV is unable to assess their value, AHV asks Consumer Affairs Victoria (CAV) to inspect the goods and provide a written opinion as to whether the goods must be stored and sold, or whether they may be destroyed or disposed of in some other way.

Where CAV confirms that the goods have some monetary value and must be stored, AHV follows its legal obligations under s386 of the RTA, by:

- storing the goods for a minimum of 28 days; and
- advising the former tenant that goods are being stored and asking them to contact AHV to arrange collection of goods; and
- in cases where the former tenant has not provided a forwarding address, advertising in a general circulation Victorian newspaper.

If there is no response from the former tenant within 28 days, AHV arranges for the goods to be sold. Any proceeds from the sale are used by AHV to meet the reasonable costs of removal, storage, advertisement and sale of goods, in accordance with the RTA. Any funds remaining from the sale of goods is retained as a credit on the former tenant's vacated account and will be provided to the former tenant if and when contact is made with AHV.

If the former tenant makes contact with AHV after the 28 day period but prior to the sale of the goods, AHV will terminate any action to sell the goods and arrange for the former tenant to collect the goods. AHV may negotiate with the former tenant regarding any reasonable costs incurred in the collection, storage and advertising of the goods.

If CAV confirms that the total value of the goods is insufficient to justify storage and sale, AHV will arrange for the removal of goods from the property so that vacant unit maintenance can proceed. If AHV incurs costs for removal of goods and/or rubbish from the property, AHV seeks compensation from the former tenant for the reasonable costs under the *AHV Tenant Responsibility Maintenance Compensation* policy (TRMC). If the former tenant has not provided a forwarding address to AHV, or the former tenant does not accept responsibility for payment of compensation, AHV will apply to VCAT for an Order for Compensation.

#### **6.12.6 Personal documents remaining in a property**

Personal documents are defined as official documents, photographs, correspondence or any other document which it would be reasonable to expect that a person may want to keep.

AHV must store all personal documents left behind by tenants or residents for a period of 90 days after the tenancy has terminated. In accordance with landlord responsibilities specified in the RTA, AHV attempts to notify the former tenant/s or resident/s to advise:

- that AHV is storing the documents;
- where the documents may be collected; and
- AHV will take action to dispose of the documents after 90 days.

AHV may require the lawful owner of personal documents who reclaim the documents to pay reasonable costs of notification, removal and care of the personal documents.

If after 90 days the personal documents remain unclaimed, AHV will generally destroy the documents in a manner which protects the privacy of the owner(s) of the documents. In addition:

- unopened mail is returned to the sender, as it is an offence to destroy an article in the course of post.
- official documents where appropriate are returned to the issuing agency, e.g. bankbooks and credit cards to the bank, driver's licence to VicRoads, etc.

### 6.12.7 Death of a sole tenant

In the case of the death of a sole tenant, AHV seeks to promptly identify the tenant's legal personal representative or next of kin who can:

- confirm the sole tenant's death; and
- authorise vacant possession of the property.

AHV takes reasonable steps to substantiate the legitimacy of a legal personal representative/next of kin.

AHV asks the legal representative/next of kin to:

- complete a '*Notification of death of sole tenant*' form; and
- return the keys to the property.

AHV may not legally enter the property of a deceased sole tenant until vacant possession has been confirmed by the identified next of kin, or AHV has obtained a relevant VCAT order to authorise termination of the tenancy. In the meantime, only the next of kin has a legal right to enter the premises.

If the next of kin is not in possession of the keys to the property, AHV arranges for a contractor to change the locks in the presence of an AHV staff member. The keys are then given to the next of kin.

#### *Terminating the tenancy*

After the death of a sole tenant, AHV may only legally terminate a tenancy and take vacant possession of the property, if:

- the tenant's next of kin has provided a '*Notification of death of sole tenant*' form and returned the keys to the property; or
- VCAT has granted an order under the relevant section of the RTA.

In the event that the next of kin fails to provide necessary confirmation of the termination of tenancy and/or does not return the keys, AHV initiates legal action. This may involve:

- Issuing an NTV to the legal personal representative or next of kin. If the legal representative or next of kin fails to take the necessary action to terminate the tenancy following the issuing of an NTV, AHV will seek an order to terminate the tenancy under s228(1)(b) of the RTA.

If the next of kin is residing in the property and does not leave the property after the expiration of the NTV, AHV may then seek an Order for Possession under s322 of the RTA; or

- making application to VCAT under s228(2) of the RTA for an order to terminate the tenancy, following the death of a sole tenant. This action may be taken if AHV has been unable to identify a next of kin, or the next of kin is unwilling to assist; or
- making application to VCAT for a possession order under s344 where the premises have been occupied by a third party without AHV's consent.

### *Removal of goods from the property*

It is the responsibility of the next of kin to arrange removal of all goods from the property before returning the keys. Goods left behind in the property after termination of the tenancy are treated as abandoned goods. If AHV incurs costs for removal of goods and/or rubbish, AHV will seek compensation for the reasonable costs of removal from the deceased estate by way of a TRMC. In the event that there are insufficient funds in the estate to cover TRMCs, AHV does not pursue the charges and the TRMC is deactivated.

## 6.13 Policy details - Abandoned Properties

### 6.13.1 Investigating an abandoned property

A potentially abandoned property may be identified in several ways, including:

- reports from neighbours;
- external appearance of the property (e.g. long grass, uncollected mail, no electricity use detected at meter etc.);
- unpaid rent over several weeks;
- inability to contact the tenant and no response to contact attempts;
- disconnection of utilities; and/or
- absence of essential items in the property (e.g. fridge, bedding etc.).

Where AHV suspects that a property may have been abandoned by the tenant, an inspection of the property is conducted. AHV takes all reasonable attempts to ascertain the whereabouts of the tenant, including making enquiries with neighbours and relevant support/community agencies.

AHV then issues a notice under s86 of the RTA, to gain entry to inspect the rented premises.

### 6.13.2 Action to confirm an abandoned property

Following the inspection of a suspected abandoned property, AHV makes application to VCAT for an Order for Abandonment under s220 of the RTA where:

- an Order for Possession has not already been obtained on the property for other breaches, such as rent arrears or antisocial behaviour; or
- the tenant has not provided written notice of intention to vacate and/or returned the keys.

AHV takes this action in order to establish legal abandonment of the property, in the event that the former tenant returns and claims tenancy rights.

If VCAT grants an Order for Abandonment, AHV terminates the tenancy agreement from the date specified on the Order.

### 6.13.3 Illegal occupants or squatters in the property

If a property originally assessed as abandoned, is subsequently found to be illegally occupied, AHV takes legal action in accordance with AHV's *Illegal occupancy* policy (see Chapter 4 *Tenancy Management* for further details).

If a property originally assessed as abandoned is subsequently found to be occupied by squatters, AHV applies for a VCAT Order of Abandonment to terminate the tenancy, and initiates action to remove squatters in accordance with the *Summary Offences Act 1968*.

## 6.14 Policy details – Vacated accounts

### 6.14.1 Arrears management

Where there is rent outstanding on a vacated account, AHV attempts to contact the former tenant to confirm that arrears are outstanding and will try to negotiate an agreement with the tenant to repay the arrears in affordable instalments.

Where a tenant vacates with outstanding debts to AHV, any future housing assistance sought from AHV will be subject to repayment of debts incurred during past AHV tenancies (refer to the Chapter 2 *Applications, eligibility assessment and waiting list management*).

If a former tenant disputes the rent arrears, AHV advises them to lodge an appeal to AHV for a review of the decision. If the appeal is unsuccessful, AHV and/or the tenant may refer the matter to VCAT to ratify the value of the debt.

### 6.14.2 Credit balance management

Where the former tenant has paid rent in advance beyond the termination of tenancy date, AHV arranges for the credit to be refunded to the former tenant.

### 6.14.3 Tenant Responsibility Maintenance Compensation

AHV's policy in relation to compensation for damage to the property identified at the termination of the tenancy, is consistent with the policy for current tenancies (see Chapter 4 *Tenancy management* policy for details). Wherever possible, AHV seeks to negotiate a local agreement with the former tenant to pay TRMCs in affordable instalments.

In the case of vacant properties where the former tenant has not provided AHV with a forwarding address, AHV makes an application to VCAT to seek an Order for Compensation under s210 of RTA when:

- works required at the property are identified as resulting from damage or neglect by the ex-tenant; and/or
- previous works had been identified as possible TRMCs during the tenancy, but no action had been taken to substantiate the works either by agreement with the tenant or at VCAT.

If a vacated tenant disputes the amount of the TRMC or denies responsibility for the damage, they are advised that they may lodge an appeal to AHV for a review of the decision.

Tenants are advised that if their appeal is not successful, AHV will apply to VCAT for a compensation order.

## 6.15 Policy log

Version	Approval date	Approved by	Changes	Review Date
1	2008			
2	July 2013	AHV Board of Directors		July 2014
3			New policy format	June 2015
4	24 Sept 2015	AHV Board of Directors	Consolidation and re-formatting of Tenancy Services manual	2016