

New Rental Law Reference Guides: Reforms Unique to Rooming Houses

Rental Reforms Implementation Project
Consumer Affairs Victoria

Version 1.0

Introduction – How to read these Reference Guides

These Reference Guides are to explain the amendments made to the *Residential Tenancies Act 1997* (the Act) following the Fairer Safer Housing review.

This set of Reference Guides includes information only on those reforms which relate to rooming houses. For a full set of Reference Guides on the reforms, please see 'New Rental Laws – All Reference Guides'.

As this set of Reference Guides was compiled from the 'New Rental Laws – All Reference Guides' document, the numbering of Reference Guides in this set has not been changed so that it remains consistent with that source document.

Note: references to legislation in this document are for the *Residential Tenancies Act 1997* as amended by the *Residential Tenancies Amendment Act 2018*.

Structure of Reference Guides

Each Reference Guide includes information on the new legislative requirements and where relevant, a brief summary of the previous requirements that applied before the Act was amended.

These Guides provide a complete description of the legal changes.

The Reference Guides do not include information on legislative requirements that have not been amended. That is, they provide information on new or changed processes and requirements but do not restate parts of the process when are unchanged.

This means that if information is not included in a Reference Guide, you can assume that the current requirement continues to apply.

Use of 'rental provider' and 'rental agreement'

Note that in the Act, 'residential rental provider' and 'residential rental agreement' are the legislative terms used, throughout the Reference Guides the colloquial terms 'rental provider' and 'rental agreement' are used instead for ease of communication.

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Reference Guide 1

Rooming house residents entitled to notice period in certain circumstances

New requirement

Notice required to be given to rooming house residents

If a person, who is not a rooming house operator:

- leases a building to another person, and
- that building is being used to operate a rooming house:
 - whether by the person leasing the building or another, and
 - whether or not the person leasing the building, or the building owner has consented to the use of that building to operate a rooming house,

they must give a notice to vacate to each rooming house resident in the following four situations, namely, where:

1. notice to terminate the lease of the building is given by either party under that lease agreement, or
2. the person operating the rooming house or any other party to any lease or other agreement under which that person (who is not the person leasing the building) occupies the building, gives notice terminating that lease or agreement, or
3. the lease, or if the person operating the rooming house is not the person leasing the building, any lease or other agreement under which that person occupies the building, is terminated by consent or agreement, or
4. the building is abandoned by the person leasing the building or the rooming house operator.

Notice not required in certain circumstances

Notice is not required where:

- the owner of the building, or
- the person who is leasing the building (who is not the rooming house operator),

intends to directly operate the premises as a rooming house following any termination/abandonment action noted above.

Formalities: who must give notice to vacate

The notice to vacate must be given by:

- the person leasing the building (who is not the rooming house operator) or their agent, or
- the owner of the building or their agent.

Reasonable enquiries must be made by the person giving the notices to vacate to identify each resident of the rooming house to ensure they receive a notice to vacate.

The notice must specify a date for vacating the building which is the later of:

- 45 days after the date on which the notice to vacate was given, or
- in situation one or two above, the date which is the end of the period specified in the notice.

Notice is taken to be served on a resident of the rooming house where a copy of the notice is affixed to the door of the resident's room.

The person giving the notice does not take on the rights, duties, and obligations of a rooming house operator.

Nothing prevents a rooming house operator from giving, in accordance with the Act, a notice to vacate to a rooming house resident, with an earlier termination date. This prevails over any notice to vacate given by the person leasing the building, the building owner, or their respective agents.

What action a rooming house resident can take after receiving a notice to vacate

Where a resident of a rooming house receives a notice to vacate, they:

- may continue to occupy the room in the rooming house on the same terms, state of repair or general condition that they first occupied the room in, and
- must pay rent to the owner of the building for the notice period, unless they can demonstrate that they have paid rent for the notice period to the rooming house operator.

Previous requirement

Previously, these provisions did not cover circumstances where the person leasing the building, or the building owner did not consent to the building being used to operate a rooming house.

Relevant legislation in the Residential Tenancies Act

142ZO Notice by owner of building or other person who is not rooming house operator (rooming houses)

Note: the definition of 'notice period' is contained in section 142ZO(11).

Reference Guide 2

Building owner must notify Council of unregistered rooming house

New requirement

An owner of a building (who is not a rooming house operator or an agent of a rooming house operator) must notify the local council in which the building is located, where the owner:

- has reason to believe that the building is being used as an unregistered rooming house, or
- given all circumstances, ought to know that the building is being used as an unregistered rooming house.

Previous requirement

Previously, this reporting obligation only applied where there was reason to believe that the building was being used as an unregistered rooming house. Formerly, this duty applied to an owner of a building (who was not a rooming house operator) or that owner's agent.

Relevant legislation in the Residential Tenancies Act

142D **Unregistered rooming house**

Reference Guide 3

Suppression of addresses in the public rooming house register

New requirement

Restricting access to the Register

The proprietor of a registered rooming house, or an applicant for the issue, renewal or transfer of a registration of a rooming house may apply to the Director to restrict public access to the address of that house. This request may be allowed where the Director is satisfied that exceptional circumstances exist.

In deciding whether to restrict information, the Director must have regard to the purpose for which the Register was established.

Where the Director decides to release restricted information, the Director must notify the applicant in writing. Information cannot be released without the consent of the applicant unless at least 28 days have passed since the Director gave written notice to the applicant, and either:

- the applicant has not applied to VCAT for a review of the decision, or
- VCAT has upheld the Director's decision to release the restricted information.

Previous requirement

Previously, it was only possible to restrict access to personal information contained in the Register (this provision has been retained). Addresses could not be suppressed.

Relevant legislation in the Residential Tenancies Act

14KA **Restriction on access to address of rooming house**

Reference Guide 4 Rooming house residents must be provided with summary of rights

New requirement

A rooming house operator must, at latest, on the day the resident moves in, provide that resident with:

- written statement of the resident's rights and duties, and
- a copy of the house rules.

The rooming house operator must display in each resident's room:

- a one-page written statement summarising the resident's rights and duties, and
- a copy of the house rules.

Previous requirement

The former legislation did not include a one-page written statement of rights and duties.

Relevant legislation in the Residential Tenancies Act

124 Provision and display of statement of rights and house rules

Relevant form

Form Rights and duties of a rooming house resident

Reference Guide 5 Rooming house agreements

New requirement

Entering into a rooming house agreement

The use of residential rental agreements for rooming houses will be abolished. Instead a resident or prospective resident and a rooming house operator may enter into a fixed term rooming house agreement. Rental agreements may be used where the resident will be occupying a self-contained apartment.

The fixed term rooming house agreement must:

- specify the terms and conditions of the resident's use and enjoyment of the rooming house,
- be in writing,
- be in the 'Rooming house agreement' form, and
- be for a period not longer than five years.

VCAT may declare that a term in a fixed term rooming house agreement is invalid where:

- that term or condition is inconsistent with, or seeks to restrict, exclude or modify the application of or exercise of a right provided by the Act,
- it is a term that the Act provides must not be included, or
- that term is a prohibited term.

A fixed term rooming house agreement may include any other term or condition that is not inconsistent with the Act or the standard agreement form.

When in a fixed term rooming house agreement

Under a fixed term rooming house agreement, the rooming house operator:

- cannot demand or accept a bond that exceeds 28 days' rent,
- may, before the end of the term of that agreement, give the resident a notice to vacate the room at the end of the fixed term. To have effect, it must:
 - specify a termination date that is on or after the date of the end of the fixed term and is not less than 28 days after the date on which the notice is given to the resident,
 - not constitute direct discrimination under the *Equal Opportunity Act 2010*,
 - not be given in response to a resident exercising or proposing to exercise a right under this Act, and
 - not be given in response to a resident making a report to the operator of damage to or breakdown of a room, facilities, fixtures, furniture or equipment in the rooming house.

Under a fixed term rooming house agreement, the resident must give the rooming house operator at least 14 days' notice of their intention to vacate the room they occupy. (In the absence of a fixed term agreement the resident must give at least 2 days' notice of intention to vacate.)

- where they have vacated without giving notice (unless the rooming house or room becomes unsafe or unfit for habitation), must pay the rooming house operator rent for the lesser period of:

- 14 days, or
- until a new resident moves into the room.
- may challenge the validity of a notice to vacate by applying to VCAT within 14 days of receiving that notice.

Previous requirement

Previously, there were no specific fixed term rooming house agreements and operators could request a maximum bond up to the equivalent of 14 days' rent. Residents had to give only two days' notice of intention to vacate and were thus liable to pay rent for up to 2 days after vacating the room without notice.

Relevant legislation in the Residential Tenancies Act

93A	Fixed term rooming house agreements (rooming houses)
94	Power to enter agreements other than fixed term rooming house agreements (rooming houses)
94AB	Additional terms for fixed term rooming house agreements (rooming houses)
94AC	Invalid terms (rooming houses)
96	What is the maximum bond? (rooming houses)
142W	Notice of intention to vacate room (rooming houses)
142X	Rent payable on termination without notice (rooming houses)
142ZA	End of fixed term rooming house agreement (rooming houses)
142ZM	Notice to have no effect in certain circumstances (rooming houses)

Note, the definition of the term 'fixed term rooming house agreement' is contained in section 3.

Relevant forms

Form	Rooming house agreement
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Reference Guide 6

Minister of Housing may declare building to be a rooming house

New requirement

A building that:

- contains one or more self-contained apartments, and
- is owned or leased by the Director of Housing, or
- is owned or leased by a registered housing agency

can be declared to be a rooming house by the Minister for Housing, at the request of the Director of Housing, by notice published in the Government Gazette or on the Internet.

This reform will expand the operation of the declared rooming houses provision to apply to buildings owned or leased by registered housing agencies (in addition to buildings owned or leased by the Director of Housing).

Previous requirement

Previously, only buildings owned or leased by the Director of Housing were capable of being declared as rooming houses by the Minister for Housing.

Previously, notice of a declaration was not permitted to be published on the Internet.

Relevant legislation in the Residential Tenancies Act

19 Minister may declare building to be a rooming house

Reference Guide 7

Entry to a rooming house resident's room

New requirement

If a rooming house operator wishes to conduct an inspection of a rooming house resident's room, they must provide 48 hours' notice. They may only conduct an inspection during any time between 8 a.m. and 6 p.m. on any day (except a public holiday) and may only do so if they have not conducted such an inspection in the past four weeks.

Previous requirement

Previously only 24 hours' notice was required.

The grounds for entry have not changed.

Relevant legislation in the Residential Tenancies Act

S136 Access to room

S137 Grounds for entry of a room