



EVICTIONS POLICY

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Evictions Policy

Purpose

The purpose of this policy is to:

- a. ensure that landlords deal with conduct that may result in the eviction of a tenant in a prompt and fair manner
- b. minimise instances of eviction
- c. where an eviction is necessary, ensure the tenant is fully informed of their rights and obligations and offered access to support agencies.

Policy context

The Residential Tenancies Act has specific provisions in relation to ending a tenancy, including in instances of eviction. The RTA provisions that apply must be considered in the context of the Performance Standards for Registered Housing Agencies, which require registered agencies to treat eviction as a mechanism of last resort.

Policy statement and principles

1. Statement

- a) SouthEast will respond to conduct that may result in eviction promptly and fairly.
- b) SouthEast will strive to minimise evictions.

2. Principles

- a) When a Notice to Vacate is issued, the tenant will be offered information on how to contact a support agency
- b) In the interest of minimising evictions, landlords will not seek a possession order on

a first attendance at VCAT, except where:

- i. the tenant has made no agreement with the landlord
 - ii. the matter relates to danger or violence
 - iii. the matter relates to malicious property damage
 - iv. there has been illegal use of the premises
 - v. the tenant has failed to attend the VCAT hearing
 - vi. the matter relates to property habitability, where the tenant has been offered appropriate alternative accommodation
- c) SouthEast will seek possession on any second VCAT attendance relating to non-compliance on a previous order or where there has been a sustained history of VCAT orders.
- d) Where a possession order has been obtained, SouthEast will enter into negotiations with the tenant to remedy the breach within the subsequent six months, except where:
- e) the order relates to a matter set out in section 2.b
- f) there has been a previous possession order for a similar matter within the preceding 12 months.
- g) If negotiations with the tenant fail or the tenant breaches the agreement reached in those negotiations, a warrant of possession will be purchased.
- h) Upon purchase of the warrant, SouthEast will refer the tenant to a support agency.
- i) The tenant will be advised of the process for the execution of the warrant.

Consideration will be given to negotiation regarding the timing of the eviction, where possible, prior to the warrant being purchased, as well as an opportunity for the tenant to collect their belongings.

Referral to support agencies

The Performance Standards for Registered Housing Agencies require registered agencies to have in place adequate arrangements to ensure tenants with support needs receive appropriate support, if relevant and where available, to sustain their tenancies. The standards also require registered agencies to deal appropriately with client advocates.

Accordingly, SouthEast will:

- Ensure that the support agency referral process strives to sustain tenancies and minimise evictions.

- Advise tenants of services and support that may assist them in sustaining their tenancies.
- Ensure that tenants with identified support needs have access to appropriate support agencies, as and when required.
- Undertake tenant referrals without the tenant's consent when SouthEast reasonably believes there is a serious and imminent threat to the tenant's health, safety or welfare.
- SouthEast will collaborate with support agencies that are supporting a tenant to sustain a tenancy.

Appropriate alternative accommodation

The Residential Tenancies Act provides for a landlord to give a tenant a notice to vacate a rented premises in a range of instances, including where the premises are deemed unfit for human habitation or unsafe, where the landlord intends to repair or renovate the premises, or where the landlord intends to sell the premises. These provisions must be considered in the context of the Performance Standards for Registered Housing Agencies, which require registered agencies to minimise enforced transfers and strive to sustain tenancies.

Accordingly:

- Alternative accommodation will represent a balance between the tenant's reasonable needs and SouthEast capacity.
- SouthEast will strive to minimise the need for a tenant to relocate.
- SouthEast will determine what constitutes an appropriate offer of accommodation based on the current household composition, current property location, other amenity items required to meet household needs and determined to be of significance to the household, and the length of time the household is required to relocate for.
- SouthEast will undertake a relocation needs assessment in consultation with the tenant to ascertain the tenant's reasonable needs.
- The tenant will be required to provide sufficient evidence to support their statement of reasonable needs.

- Where a tenant is required to relocate on a permanent basis, any approved member-funded improvement will, as best as possible, be reflected in the alternative accommodation.
- The tenant will be provided with an offer of appropriate alternative accommodation before they are required to vacate a property.
- The timeline for alternative accommodation offers will reflect the urgency of the need for alternative accommodation.
- Where a permanent relocation is required and cannot be established in the necessary timeframe, temporary accommodation will be offered until permanent accommodation is secured.
- A tenant is permitted to make their own temporary arrangements. This will not affect their offer of permanent relocation and rent will not be charged while the tenant's own temporary arrangements are in place.
- Refusal by the tenant to accept an appropriate offer of permanent alternative accommodation will result in the termination of their tenancy.
- The tenant will not experience unreasonable financial detriment as a result of this policy being enacted.
- SouthEast will pay for or reimburse any reasonable costs associated with the relocation.

Scope

This policy applies to all residential tenancies managed by SouthEast.

Legal and standards

This policy adheres to and incorporates guidance from:

- Residential Tenancies Act 1997.
- Performance Standards for Registered Housing Agencies: section 1 Tenant and Housing Services.
- Victorian Charter of Human Rights and Responsibilities 2006.

This policy is consistent with:

- International Co-op Principles: Open & Voluntary Membership, Democratic Control

by Members, Co-operation among Co-operatives, Concern for Community.

- The SouthEast Tenancy Agreement

Ending a Tenancy

Reasons for ending a tenancy

SECTION	REASON	DESCRIPTION	MINIMUM NOTICE PERIOD
91ZK	Threats and intimidation to workers	A rental provider may give a renter a notice to vacate if the renter or any other person occupying or jointly occupying the rented premises has seriously threatened or intimidated the rental provider or the provider's agent, or either of those persons' contractors or employees.	14 Days
91ZZG	Pet kept without consent	A rental provider may give a notice to vacate if VCAT has made an order excluding a pet from the rental premise, at least 14 days have passed, and the renter has not complied with the VCAT order.	28 days

Reasonable and proportionate Test

The following must be considered when issuing a notice to vacate.

- The nature, frequency, duration and conduct that led to the application, including recurrent breaches of obligations;
- Whether any breach was trivial;
- Whether it was caused by someone other than the renter
- Any family violence or personal violence intervention orders or related matters;
- Whether the breach has been remedied as far as is practicable;
- Whether the breaching party has, or will soon have, capacity to remedy the breach and comply with its obligations;

- The effect of the conduct on other renters;
- Whether VCAT could take any other action instead of making the order;
- The behaviour of the rental provider and/or agent; and
- Anything else VCAT thinks is relevant.

Death of a Sole Renter

Process for ending tenancies following the death of a sole renter.

Under s91N, if a renter dies, the tenancy ends at the earliest of the following dates:

- The termination date specified in a notice of intention to vacate given by the deceased renter's legal representative or next of kin.
- The termination date specified in the notice to vacate given by the rental provider to the deceased renter's legal representative or next of kin.
- The termination date specified in the Tribunal order under subsection (5); or
- A date agreed in writing between the residential rental provider and the legal personal representative or next of kin of the deceased renter.
- The date in a notice of intention to vacate or notice to vacate to or from the legal representative or next of kin can be earlier than the end date of a fixed term agreement.

If a next of kin or legal representative cannot be located, a rental provider can apply to VCAT under s91N (4) for an order terminating the agreement.

These arrangements do not apply if there is more than one renter under a rental agreement.

Endangerment

A rental provider can give a notice to vacate to a renter if they endanger the safety of neighbours. The reforms expand the people covered by this protection to include the rental provider or their agent, or the rental provider's or agent's contractor or employee.

The Supreme Court of Victoria has held that the use of the present tense term "endangers" means that the conduct must be continuing at the time the notice to vacate is given.

The Director of Consumer Affairs has published guidelines that VCAT must consider when determining applications for possession due to endangerment.

These guidelines also makes clear that the danger must be ongoing as it states that the rental provider must demonstrate the following in order to show that the behaviour gave rise to the notice to vacate:

This policy should be considered in conjunction with:

- Arrears Management and Hardship Policy
- The SouthEast Member Manual, 3.11 Transfers.

Transparency and accessibility

This policy will be available on the SouthEast website www.sehc.org.au

Review of this policy

This policy should be reviewed every 2 years.

Version:		
Date approved:	29 11 2019	
Review date	29 11 2021	
CEO:	BOARD:	APPROVED:

Review and approval of this policy			
Frequency	Person responsible	Approval	
Biennially	CEO	Board	
Policy review and version tracking			
Review	Approved	Approved by	Next review date:
	29 11 2019		29 11 2021
1		Board	
2			

Acknowledgement

SouthEast acknowledges the work of Common Equity Housing Limited in the development of this policy template and the update to apply changes to the Residential Tenancy Act amendments effective 29 March 2021.

Implementation

Post Board Approval:

- Reference in the Tenancy Manual, add to the SouthEast web site, and the Victorian Housing Register CHIMES data base and mention in the next Housing Futures
- Include in tenant induction documentation