

Recovering possession of your rental premises at the end of the tenancy

As the Tenancies Branch has recently received a number of allegations concerning landlords/agents who have prematurely taken possession of a property, it is timely to address what is required to lawfully recover premises and to clarify some misconceptions.

Taking vacant possession

One misconception is that a landlord/agent is entitled to recover possession of the premises as soon as the handover day on a Notice of Termination or a Notice of Breach of Agreement is passed. However the tenancy is not terminated until the tenant *hands over* vacant possession on or after the termination day.

Where it is clear that the tenant is remaining in the premises after this date or has not handed back the keys to the premises then, in the absence of agreement, it is necessary for the landlord/agent to make an application to the Residential Tenancies Tribunal (the Tribunal) to terminate the agreement and to issue an order of possession.

It is acknowledged that there are many occasions where it is not clear whether the tenant remains in the premises. Problems often arise where tenants have partially completed the moving out process. Tenants are encouraged to keep the landlord/agent updated on their movements in situations where moving plans change or if some goods are left in the premises to be retrieved at a later time.

Consider the following example: A landlord has given a termination notice to the tenant with the handover day

duly nominated. The day after the handover day the landlord has not heard from the tenants so the landlord telephones the rental premises. There is no answer, so the landlord drives to the property and observes the premises are locked and the gardens are reasonably tidy. The landlord knocks loudly on the door several times and tries both front and back entrances. As there is no sign that the tenants are still in occupation, the landlord makes a judgement call and decides to enter. On entering the property the landlord discovers little sign of habitation except a couple of sealed and unsealed cartons, and in the living area several items of furniture. Is the property abandoned? Has the tenant given up vacant possession? Under these circumstances it may well be unclear.

Apply to the Tribunal

If there is any doubt landlords/agents are advised to make an application to the Tribunal for an order of possession on the grounds that the tenancy has terminated.

An order of possession that has been issued by the Tribunal does not however, authorise the landlord/agent to personally recover the premises. With an order of possession the landlord must then request a bailiff of the Tribunal to attend the property

to enforce the order of possession. The bailiff may call upon others to assist in executing the order. A landlord/agent who acts to recover the premises without a bailiff present or changes the locks prior to the date on the order is likely to be committing an offence against the Act.

Abandoned Goods

Once a landlord/agent has taken vacant possession of an abandoned tenancy, the next issue then, is of course what to do with the tenant's goods that have been left behind. Section 97 of the Act clearly outlines the landlord's responsibilities in regards to management of abandoned goods.

Put simply, the landlord must hold on to the goods for a period of 60 days, give appropriate notice of the storage of the goods and return the goods to the tenant if the tenant claims them.

However, if the cost of removal, storage and sale of the goods is more than the value of the goods themselves then the landlord is able to dispose of the goods.

How do I know what it will cost to store the goods?

Before commencing the abandoned goods procedure, it is important to ascertain how much it will cost. To do this you will need to tally up the costs. You will need to take into consideration the following costs:

- Packing the goods.
- Removal and storage of the goods.
- Publishing a notice of storage of the goods (Form 6) in The Advertiser.
- Sale of the goods at public auction.

When calculating the costs, it is important to remember that these need to be actual costs. The landlord can claim \$15.00 per hour for their time, however, if the landlord chooses to store the goods in a shed he happens to have vacant then there is no actual cost associated with this. Similarly, the cost of professional removal would be an acceptable cost, but if the landlord chooses to do the removal himself, again this would be only at the hourly rate allowable, plus the cost of trailer hire (unless of course he owns a trailer!)

How do I know the value of the goods?

The next step is to value the goods themselves. In valuing the goods it is important to note that it is the value of the goods in total that matters, not the value of each item taken individually. However, it is important to have an itemised list of all of the goods that have been left at the property. One way to ascertain the value of the goods is to have a professional provide a quote for what they believe the goods are worth.

Once this value is determined then it is simply a matter of comparing this with the costs associated with storage of the goods.

If the value of the goods is less than the costs associated with

packing, storage, notification and sale of the goods, then the landlord is free to dispose of the goods in whatever way he can. And as a safeguard, in case the tenant comes back to claim the goods, the landlord has clear documentation of what goods were left behind and the value of the goods.

What if the value of the goods is high?

If the value of the goods exceeds the costs associated with holding on to them then the full 'abandoned goods procedure', as outlined in section 97 of the Act, needs to be followed. In other words, the landlord will need to do the following:

- ❖ Dispose of any perishables.
- ❖ Store the goods for up to 60 days.
- ❖ Give notice of the storage of goods within 7 days;
 - Directly to the tenant if possible.
 - To anyone else who may have an interest in the goods or be aware of the tenant's whereabouts.
 - By publishing a Form 6 in The Advertiser.

A person entitled to the goods is entitled to collect the goods any time during this 60 days but to do so they must repay the landlord the costs the landlord has borne in storing of the goods. This includes the costs of packing and removal as well as the publication of the Form 6.

If the goods are not claimed within the 60 days then the landlord must sell the goods at public auction as soon as practicable. The landlord is

able to retain his costs from the sale of the goods as well as any other amounts owed under the residential tenancy agreement, such as unpaid rent or cleaning and repairs done at the end of the tenancy that can be attributed to the tenant. The balance, if any, must be paid to the owner if possible, or otherwise to the Commissioner of Consumer Affairs for safekeeping in case the owner of the goods makes a later claim.

What about animals?

Normally animals would fall within the classification of goods, however the section of the Act relating to abandoned goods (97) clearly envisages that any goods should be able to be stored and the Residential Tenancies Tribunal has previously concluded that storage is not appropriate with respect to animals and that storage of animals was not envisaged by Section 97. Consequently animals should be held not to be goods for the purposes of this section.

As there are no other rules in the Act relevant to animals left on the premises the Tribunal has previously relied on its general power in Section 110(m) to do anything else necessary or desirable to resolve a tenancy dispute.

With pets or livestock not claimed by the tenant, the Tribunal would normally authorise the landlord to retain the animals on the property whilst they can be cared for and if the landlord considers it appropriate, to hand over the animals to the local council or the RSPCA.

For more information about recovering vacant possession of a rental premises or disposal of abandoned goods you should contact the Tenancy Advice Section on 8204 9544.