

# for sale, selling, sold!

## your rights when the landlord is selling your rented home

The landlord can sell the property during your tenancy even if you have a fixed-term tenancy agreement (lease). Your lease continues as normal.

### moving out

#### do I have to move out?

Just because the owner is selling, it doesn't mean that you have to move out. If the landlord wants you to move out they have to give you a *Notice to Vacate*.

#### when do I have to move out if I get a *Notice to Vacate*?

If the landlord wants you to move out because of the sale, [they can give you a \*Notice to Vacate\*](#) if they intend to sell the property vacant immediately after the *Notice to Vacate* terminates. If they have already signed a contract of sale and want you to move out, they need to give you a *Notice to Vacate* within 14 days of signing the contract of sale, or when all the contract conditions have been met. This means they can't think about it for a few months after signing a contract then use the sale as reason on the *Notice to Vacate*.

The *Notice to Vacate* must be given to you at least **60 days** before the date they want you to leave.

If you have a fixed-term lease, you have the right to stay until the end of your fixed-term. So, the date in the *Notice to Vacate* can't be before the end of your fixed term, unless you have agreed to leave earlier.

#### can I move out early?

If you're on a fixed-term lease and you want to move out early because the property is being sold (or has been sold), you may be able to end the tenancy early if the landlord agrees.

**Make sure you get the agreement in writing and that it's signed by the landlord or agent or you may have to pay the costs of [breaking the lease](#).**

If you have a periodic lease (e.g. month-to-month) and you get a *60-day Notice to Vacate*, you can move out before the 60 days are up. But you must give the landlord or new owner written notice at least **14 days** before you leave. You also have to pay rent for these 14 days, even if you move out sooner.

## can I get compensation for moving out early?

If the owner wants you to move out before the end of your fixed term, [you can ask for some compensation](#) for your inconvenience. If they agree to the compensation, get the agreement in writing and make sure that it's signed by you and the current or new owner, whichever one owns the property at the time and is offering you the compensation, or their agent.

## entries and inspections

### tenant's rights

As a tenant [you have a right to 'quiet enjoyment'](#) of your rented home so the landlord must make sure they protect your rights if they want to enter your home.

### do I have to pay for cleaning?

You don't have to go to any special effort or expense (e.g. doing extra cleaning yourself or hiring cleaners) to make the property more attractive to prospective buyers. All you are legally required to do is to keep the premises in 'a reasonably clean condition'.

### landlord's rights

The landlord has a right to show the property to a 'prospective buyer' provided they meet all the entry requirements under the law before they enter your home.

### open for inspection

But even though the landlord can show through a 'prospective buyer', under the current law the landlord **doesn't** have the right to have an 'open for inspection' and you do not need to allow the landlord access or entry to your home for this reason. (See [Higgerson v Ricco \(Residential Tenancies\) \[2014\] VCAT 1214.](#))

### when can they enter?

The landlord (or agent) can enter the property with a prospective buyer:

- **at any time you agree to**, but the landlord must get your consent in the same week as they want to enter the property. In other words, they can't ask you more than 7 days before they want to enter. It's a good idea to get the request in writing and for you to reply in writing even if it's just a text message or an email. This way you'll have a record of exactly what you've agreed to.
- **even if they don't have your consent, but they must:**
  - **give you written notice at least 24 hours before they want to enter.** The notice must include the reason they want to enter the property and be delivered to you in person between the hours of 8am and 6pm or sent by mail. If the notice is sent by mail, they must add enough time for the mail to be delivered as the 24 hours starts when you receive the notice, not when it's written or posted. See [Australia Post delivery times](#). The landlord might give you the notice by electronic method such as email if you agree (see [starting a tenancy](#) for more information on consenting to have notices sent electronically).
  - **only enter between 8 am and 6 pm**
  - **not enter on a public holiday**

## how long can they stay?

They can't stay longer than necessary for the potential buyer to inspect the property.

## what if I'm not home?

If the landlord has met all the entry requirements under the law and has given you proper notice, they can enter the property whether you are at home or not.

## what if I didn't get any notice?

If you didn't get written notice and you're home when the landlord, or agent, turn up you don't have to let them in.

It's an offence for the landlord or agent to enter your home if they don't have your consent and they didn't give you proper notice, unless there is a reasonable excuse, such as an emergency. You can report offences to [Consumer Affairs Victoria](#) who can issue an infringement notice on the landlord or agent if they have failed to follow the law.

# photographs for advertising

As part of selling a property, agents usually want photographs for the sale board and internet advertising.

## landlord's rights

The law **doesn't** give the landlord a right to enter your home to take photographs for the purpose of advertising the property for sale.

## tenant's rights

Because the landlord doesn't have the right, you may not have to allow them entry. If you want to allow entry for this reason you could make an agreement about what will be photographed and how the photographs will be used. You can insist that the photographer be accompanied by the landlord or real estate agent.

## risk of theft

If you think the photos showing your possessions could increase the risk of theft, you should cover up or remove any valuable items before any photos are taken.

## privacy

If you think the photos will breach your privacy because they will clearly identify you or a family member, contact the [Australian Information Commissioner](#) on [1300 363 992](#) for advice.

# make a deal with the landlord

You could try to make an agreement with the landlord or agent about when and how often they will enter your home. It's important to get it in writing and make sure that it's signed by you and the landlord or agent.

The agreement could include conditions such as:

- The landlord or agent will only show the property to a prospective buyer if they have made a convenient appointment time with you
- The landlord or agent will not have the property 'open for inspection'
- You will pay reduced rent as compensation for the inconvenience and interference to your quiet enjoyment caused by the entries
- The landlord or any other person will not enter the property for the purpose of taking photographs without your consent
- The photographer will only enter the premises if accompanied by the landlord or real estate agent and only at a time when you are able to be present

## unreasonable or unlawful entry

If you think the landlord or agent's entry to your home is unreasonable because it disrupts your quiet enjoyment of the rented premises, you can take steps to restrict their entry.

### what's unreasonable?

If the landlord or their agent doesn't give you enough notice, if they show people through too often or stay too long, that may be considered 'unreasonable'.

### apply for a restraining order

If you think the landlord is being unreasonable, you can apply to VCAT for a restraining order. You will need evidence about what's been happening. For example, you can write down the dates and times that people are shown through the property and how long they stay each time.

Applications for restraining orders are given priority over non-urgent applications and the hearing could be within a couple of days. It's a good idea to give VCAT a call the day after submitting your application to check if they have set a hearing date. If they haven't, call the next day. If you miss the hearing, VCAT may rule in favour of the landlord.

### apply for compensation

If the landlord doesn't take reasonable steps to ensure you have quiet enjoyment of the premises then it's a *breach of their duty*, and [you may be able to claim compensation](#). You may also be able to claim compensation if your goods are stolen or damaged during an entry.

# lease and bond

## do I need a new lease?

No. If the property is sold, your lease continues as normal with all the same terms and conditions (including the amount of rent that you pay, how and when you pay, and the date when the fixed term ends). The only thing that changes is that new owner takes on the rights and duties of the landlord. You should get a letter to let you know the name of the new landlord.

## what happens to my bond?

When the property is sold, both the new owner and the old owner must notify the *Residential Tenancies Bond Authority (RTBA)*. Your bond remains with the RTBA until the end of the tenancy. If the landlord's name was on the *Bond Lodgement form*, you should get a letter from RTBA confirming the name of the new landlord. If the real estate agent's name was on the *Bond Lodgement form*, nothing changes.

This information is a guide only and should not be used as a substitute for professional legal advice.

The information on this page relates to existing periodic tenancy agreements and short fixed-term tenancy agreements (for fixed-term periods of less than 5 years). The information is current as of the date of publication, but may be subject to change with future amendments to the laws relating to rental properties. If you are unsure what laws apply to you, you should seek legal advice.

## the law

### Residential Tenancies Act 1997 (AustLII website)

[section 67 – quiet enjoyment](#)

[section 70 – locks](#)

[section 70A – locks for properties subject to intervention orders/notices](#)

[section 71 – applying to VCAT to change locks without consent](#)

[section 85 – entry of rented premises](#)

[section 86 – grounds for entry](#)

[section 87 – manner of entry](#)

[section 88 – what must be in notice of entry?](#)

[section 89 – duty to allow entry if requirements met](#)

[section 90 – applying to VCAT for compensation if damage is caused during entry](#)

[section 91 – applying to VCAT for a restraining order](#)

[section 91A – offence to enter premises without meeting requirements](#)

[section 259 – notice to vacate for sale](#)

### VCAT ruling on open for inspections

[Higgerson v Ricco \(Residential Tenancies\) \[2014\] VCAT 1214](#)

## related pages

[privacy and entry](#)

[when the landlord breaches their duties](#)

[notice to vacate](#)

[making a complaint](#)

[compensation for tenants](#)

[when you want to leave](#)

[breaking your lease](#)

[starting a tenancy](#)

[the Tribunal \(VCAT\)](#)



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