



# Ending a Residential Tenancy Agreement

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*As solicitors for the REIQ Professional Indemnity Scheme (underwritten by QBE Insurance (Australia) Limited and brokered by Aon Risk Solutions), we commonly encounter situations where both tenants and property managers are not fully aware of the ways in which a tenancy agreement can be ended under the Residential Tenancies and Rooming Accommodation Act 2008 (Qld) (**RTRA Act**).*

A residential tenancy agreement can only end in a way mentioned in section 277 of the RTRA Act, including (but not limited to):

- by written agreement of the lessor and tenant (section 277(2));
- by the lessor or property manager giving the tenant a Form 12 Notice to Leave (**Form 12**) and the tenant handing over vacant possession on or after the handover day (section 277(3)); or
- by an order of the Queensland Civil and Administrative Tribunal (**the Tribunal**) (section 277(5)).

In this article, we will review one of the more common reasons for ending a residential tenancy agreement outlined in the RTRA Act and the process involved in order to comply with the legislative requirements.

## **Unremedied breach of tenancy agreement**

In accordance with section 281 of the RTRA Act, a Form 12 can be issued to a tenant because he or she failed to comply, within the allowed remedy period, with a Form 11 Notice to Remedy Breach (**Form 11**). However, before issuing a Form 12 for an unremedied breach, property managers must ensure that the Form 11 has been correctly issued to the tenant.

Section 280 of the RTRA Act applies if a lessor believes on reasonable grounds that the rent payable under the tenancy agreement has remained unpaid in breach of the agreement for at least seven days or the tenant has breached another term of the agreement, which has not been remedied. In the circumstances, a Form 11 may be given to the tenant requiring the breach to be remedied within the allowed remedy period.

If the Form 11 has been correctly issued and the breach has not been remedied, before proceeding to issue a Form 12, property managers should first obtain written instructions from their lessor client. Once written instructions have been obtained to issue the Form 12, property managers should ensure that it complies with section 326 of the RTRA Act.

If the tenant fails to hand over vacant possession of the property to the lessor on the handover day, the lessor may apply to the Tribunal for a termination order. An application for failure to leave must be made within two weeks after the handover day. It is important that property managers ensure that written instructions are obtained from their lessor client before proceeding with any application in the Tribunal.

Section 337 of the RTRA Act provides that in considering an application for failure to leave for unremedied breach, the Tribunal may make an order terminating the tenancy agreement if it is satisfied that:

- the lessor has established the ground of the application and the Form 12; and
- the tenant committed the breach of the agreement stated in the Form 11 about which the Form 12 was issued; and
- the breach justifies terminating the agreement.

In considering whether the breach justifies terminating the agreement, the Tribunal may consider:

- the seriousness of the breach; and
- any steps taken by the tenant to remedy the breach; and
- whether the breach was recurrent and, if so, the frequency of the recurrences; and
- the detriment caused, or likely to be caused, to the lessor by the breach; and
- whether the lessor has acted reasonably about the breach; and
- any other issues the Tribunal considers appropriate.

The operation of section 377 of the RTRA Act was recently considered by the Tribunal, in its appellate jurisdiction, in *Collins v Blackburn* [2017] QCATA 69.

In *Collins*, the Appellant, who had rented a flat from the Respondents for about eleven years, was issued with a Form 11 for unpaid rent. The Respondents proceeded to issue a Form 12 as the Appellant's rent remained unpaid after the expiry of the Form 11. The Appellant subsequently vacated the flat but in the meantime, the Respondents filed an application in the Tribunal seeking an order terminating the Appellant's tenancy agreement.

At first instance, the Tribunal ordered that the Appellant's tenancy agreement be terminated. The Appellant sought leave to appeal the decision on a number of grounds. Although the Appellant had since vacated the property, she maintained

that her tenancy agreement should not have been terminated simply due to her decision to stop paying rent for a short time.

The Appellant submitted that she had been a good tenant for eleven years and, until recently, had always paid her rent on time. The Appellant was also up to date with her rent by the time the Tribunal heard the application.

The Senior Member who determined the appeal considered the above points and held that the Appellant's breach was not serious, was not recurrent, caused little detriment to the Respondents and had been remedied by the time the application was heard in the Tribunal. The Senior Member stated that, "*Ordinarily, one failure to pay rent in eleven years would not justify a termination.*"<sup>1</sup>

#### Best practice recommendations

In circumstances where a tenant has breached his or her tenancy agreement and the breach has not been remedied, it is more than likely this will cause significant concern and stress for a lessor. As a matter of best practice, it is important property managers implement proper procedures to handle such situations, and to protect against future allegations of mismanagement resulting in a lessor's loss and expense.

Property managers should ensure that all instructions from their lessor clients are in writing in relation to the ending of a tenancy agreement. Further, it remains good practice to ensure that all conversations and telephone calls are recorded in a file note, with sufficient detail to be referable at a later date should a dispute arise. However, most significantly, it is important that property managers act in accordance with the procedural requirements of the RTRA Act when issuing appropriate notices and commencing any applications in the Tribunal, in order to minimise the loss which may be suffered by their lessor clients.

<sup>1</sup> *Collins v Blackburn* [2017] QCATA 69 [19].

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