

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
RESIDENTIAL TENANCIES LIST
REGISTER OF PROCEEDINGS**

APPLICANT(S):

Residential Rental Provider Ting Zhang

RESPONDENT(S):

Renter Podjana Tienmon
 Chawakorn Kamnuansil

RENTED PREMISES: 1803/243 Franklin Street, MELBOURNE 3000

BOND NUMBER(S): 15733722

Application under *Residential Tenancies Act 1997 possession - unfit or unsafe Section 322(1),91ZL*

These directions provide **IMPORTANT** information about your hearing. You should follow the directions and make sure that all evidence relied on is sent to both VCAT and the other party at least 3 days before the hearing.

What is the application about?

1. The rental provider wants possession of the rented premises after giving the renter a notice to vacate under section **91ZL (Condition of premises)** of the *Residential Tenancies Act 1997* (the Act). Such a notice can be given if: *the premises (a) are unfit for human habitation; or (b) have been destroyed totally or to such an extent as to be rendered unsafe.*

Check whether the Notice to Vacate is valid

2. A notice to vacate is only valid if:
 - (a) it is in the **prescribed form** (Form 6, Schedule 1 of the *Residential Tenancies Regulations 2021*);
 - (b) it **correctly** identifies the rental provider, the renter and the address of the rented premises;
 - (c) it includes a reference to **section 91ZL** of the Act, being the grounds to give the notice;
 - (d) it contains **sufficient detail** about the condition of the premises and how they are unfit, destroyed or so unsafe as to be uninhabitable, to put the renter on notice of the reason(s) why the notice has been given (it is not enough to repeat the words in the Act);
 - (e) it includes a date that the renter needs to leave (*termination date*); and
 - (f) it gives the renter enough notice to leave. Under section 91ZL, the termination date can be the same day the renter is **given** the notice.

NOTE: A possession order cannot be made if the notice to vacate is not valid. The rental provider should check the notice and, if it is not valid, immediately withdraw the application so that any hearing can be cancelled and the time reallocated.

What will VCAT consider at the hearing?

3. VCAT must determine or consider:
 - (a) the validity of the notice to vacate;
 - (b) whether the grounds to give the notice have been proved;
 - (c) whether it is reasonable and proportionate to make a possession order taking into account the interests of, and the impact of a possession order on, the rental provider, the renter and other residents or neighbours and the matters set out in section 330A of the Act (see below).

What must the Rental Provider do?

4. The rental provider must send the following as soon as possible, to both the renter and the Tribunal:
 - (a) A completed "*Summary of proofs - possession of residential rental premises for reasons other than rental arrears*" (available to download from the VCAT website);
 - (b) A signed copy of the Notice to Vacate and any attachments, together with proof of service of the notice to vacate and the VCAT application (if sent by email, provide a copy of the email with the attachments and the written agreement showing consent to electronic service);
 - (c) Any evidence of the matters relied on in the notice to vacate and notification of any witnesses who will attend to give evidence; and
 - (d) Any statement addressing the issues outlined at paragraph 3 above.

What must the Renter do?

5. To ensure the matter is ready for hearing, the renter should send the following, to both the rental provider and the Tribunal, as soon as possible:
 - (a) A brief statement responding to the allegations contained in the notice to vacate;
 - (b) Any evidence that they want to rely on at the hearing and notification of any witnesses who will attend to give evidence; and
 - (c) Any statement addressing the issues outlined at paragraph 3 above.

How do I prepare and give my evidence to the other party?

6. Prepare your evidence and send it to the other party, in the following manner:
 - (i) Save each of your documents using a file name that enables the document to be readily identified by others, for example "s91ZM NTV No 3", "Incoming condition report", "Video of incident 2.10.24", "Photo damage kitchen bench".
 - (ii) Note that any photograph should be in colour, and must identify the date taken, and the room / area of the premises to which the photograph relates.
 - (iii) Send a copy of your document to the other party, preferably to their last known email address, but otherwise to their last known postal address. Note you will need to provide proof of service to VCAT.
 - (iv) Do not use drop box links or zip files when sending your documents to the party.

How do I submit my evidence to VCAT for the hearing?

7. Submit your evidence for your hearing to VCAT in the following manner:
 - (i) You will receive an email from VCAT which includes a link enabling you to upload your documents directly to VCAT's portal for the member to view - if you have not provided VCAT with an email address please contact us immediately on **renting@courts.vic.gov.au** to advise of your email address.
 - (ii) Once you have accessed the link, you will need to select the most appropriate category to upload each of your individual documents.
8. **Do not** upload requests for adjournments, reviews and other procedural matters via the above method. Such requests must be sent to VCAT via email - **renting@courts.vic.gov.au** - and include the reference number of this proceeding in the subject line. Copy the email to the other parties.
9. If you are attending a hearing "IN PERSON" at one of our VCAT venues, you **MUST ALSO** bring a paper copy of all your documents to the hearing for the Member.

The Hearing

10. The matter will be listed shortly for hearing for one hour on a date and time to be fixed.
11. If you think more time is needed, you must immediately tell VCAT and explain why additional time is

required. Any such request will be considered by a Head of List or Duty Member.

NOTE: Reasonable and Proportionate Considerations (ss330(1)(f) and 330A of the Act)

- A A possession order must be made if, in the circumstances of the particular application, it is reasonable and proportionate, having regard to section 330A, to make a possession order taking into account the interests of, and the impact on, each of the following (as relevant) in making the possession order-
- (i) the rental provider
 - (ii) the renter
 - (iii) any person who has been affected by the acts or behaviour of the renter.
- B For the purposes of determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following:
- (a) the nature, frequency and duration of the conduct of the renter which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a residential rental agreement;
 - (b) whether the breach is trivial;
 - (c) whether the breach was caused by the conduct of any person other than the renter;
 - (d) whether the renter has made an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order and-
 - (i) if an application has been made, whether a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is still in force; and
 - (ii) if a notice or order was made, whether it included an exclusion condition; and
 - (iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant;
 - (e) whether the breach has been remedied as far as practicable;
 - (f) whether the renter has, or will soon have, capacity to remedy the breach and comply with any obligations under the residential rental agreement, as the case requires;
 - (g) the effect of the conduct of the renter on others as a renter;
 - (ga) any community statement provided by Homes Victoria;
 - (h) whether any other order or course of action is reasonably available instead of making a possession order;
 - (i) as the case requires, the behaviour of the residential rental provider, the provider's agent, and;
 - (j) any other matter the Tribunal considers relevant.



A. Crittenden, Registrar

