

FACT SHEET

Allowing time when serving notices

General Tenancies – Fixed term and Periodic

The *Residential Tenancies Act 1994* has clear requirements for allowing time when serving notices. In some instances, the Act states that you must give a certain amount of notice before taking applicable action and in others, the Act sets limits on the time within which applicable action can be taken. To ensure your rights of recourse are not lost, it is important to follow the set notice periods. This Fact Sheet relates to fixed term agreements and periodic agreements. There is a separate Fact Sheet about Moveable Dwellings.

Notices Given During A Tenancy

NOTICE	TIME ALLOWED
Notice of rent increase	Lessor to give at least 1 month for fixed term agreements (where agreement allows for rent increase). At least 2 months for periodic agreements.
Application to Small Claims Tribunal to review rent increase	Tenant to make application within 30 days after the notice of rent increase has been received.
Notice to remedy breach for rent arrears	Rent must be unpaid for at least 7 days before a <i>Notice to Remedy Breach</i> can be given by lessor - tenant is allowed at least 7 days to remedy breach.
Notice to remedy general breach (breaches of the Act apart from rent arrears)	Notice must give at least 7 days to remedy breach.
Notice of damage	Tenant to advise lessor as soon as tenant becomes aware of damage.
Notice of bond increase (notice can only be given by lessor at least 11 months after previous notice for bond increase)	At least 1 month.
Notice to RTA's Dispute Resolution Service about a bond dispute after receiving a <i>Notice of Claim</i> for bond from RTA	Notice to the RTA must be given within 14 days after <u>service</u> of <i>Notice of Claim</i> by RTA (Note that 14 days is counted from time after <u>service</u> of notice by RTA, and not from time of receipt of notice). The RTA includes the date in the notice that it sends out.

Notice of entry for:

- General inspections (must not be more than once every 3 months unless otherwise agreed)
- Routine repairs
- Show prospective purchasers or tenant
- Valuation
- Suspicion of abandonment
- Emergency or to prevent further damage

Notice by lessor must give:

- At least 7 days
- At least 24 hours except in remote areas with a shortage of trades people
- At least 24 hours notice (a *Notice of Intention to Sell* must also be given if place is for sale)
- At least 24 hours
- At least 24 hours
- No notice required

Advise RTA of application to Small Claims Tribunal about a bond dispute after the RTA has issued a *Notice of Unresolved Dispute*

Within 7 days after service of *Notice of Unresolved Dispute* by RTA.

Notices For Ending A Tenancy

A *Notice to Leave* (Form 12) is given by the lessor/agent to end a tenancy. The notice must give the tenant time to leave the premises, even at the end of a fixed term tenancy.

REASON FOR ENDING TENANCY - LESSOR	TIME
Unremedied rent arrears	At least 7 days (after expiry of <i>Notice to Remedy Breach</i> for rent arrears).
Unremedied general breach (breaches of the Act apart from rent arrears)	At least 14 days (after expiry of <i>Notice to Remedy Breach</i>).
Non-compliance with a Tribunal order	At least 7 days.
Compulsory acquisition (the notice must be given within 1 month after the compulsory acquisition)	At least 2 months.
Premises sold	For periodic agreements only - at least 4 weeks (2 days for short tenancy - moveable dwellings).
Non-liveability (the notice must be given within 1 month of the event causing the non-liveability)	The same day the notice is given.
Abandonment	If the tenant does not respond to an <i>Abandonment Termination Notice</i> (Form 15) within 7 days, tenant is taken to have abandoned the premises. Tenant may dispute the notice by applying to the Small Claims Tribunal within 28 days of the notice being served.

Termination of employment-related tenancy agreement	At least 4 weeks, unless an award or employment contract states otherwise.
End of supported accommodation assistance	At least 4 weeks.
End of entitlement to housing assistance (public housing or community housing)	At least 2 months.
Without ground	For periodic agreements - at least 2 months notice (2 days for short term agreements) For fixed term agreements - 14 days or the end of the fixed term, whichever is the later in time.

A *Notice of Intention to Leave* (Form 13) is given by the tenant to end a tenancy. The time periods which a tenant must allow in a *Notice of Intention to Leave* are the same as for the lessor except in the cases listed below.

REASON FOR ENDING TENANCY - TENANT	TIME
Unremedied breach	7 days.
Compulsory acquisition	2 weeks.
Without grounds	For periodic agreements only - 2 weeks. For fixed term agreements - 14 days or the end of the fixed term, whichever is the later in time.

Counting Days in Notice Periods

The *Acts Interpretations Act 1954* provides direction on how to interpret time periods in the *Residential Tenancies Act 1994*.

Time periods for serving notices are expressed as clear days between the day of serving the notice and the day for taking the next action. This means that when you calculate the dates on the notices to allow the correct time, you must not count the day the notice is served at the address and you must not take the next action until the day after the last day.

For example, if you hand deliver a 7 day notice on the 12th of June, you may start counting the 7 days from the 13th of June, the seventh day is the 19th of June, so the next action may be taken on the 20th of June.

The *Acts Interpretation Act 1954* states that a notice expires at midnight, so you must allow the person the entire 24 hours of the last day of the notice before you can take the next action.

For example, if the last day of a *Notice to Leave* is the 19th of June, by law the tenant must be allowed until midnight on that date to leave.

It is clearly impractical to conduct a handover of keys and inspection at midnight on the 19th of June, so parties are encouraged to make an agreement about when this may occur.

For example, parties may agree to vacation of the premises and handover by close of business on the 19th of June or 9am on the 20th of June rather than at midnight.

Counting Hours in Notice Periods

When the notice period is 24 hours, such as in some grounds for entry to premises, a minimum of 24 hours must be allowed from the time the notice is served at the premises until the next action, such as the entry.

This can be calculated to the hour when a notice is served in person. Where service of the notice is by post, the 24 hour period starts from the time the post arrives at the premises.

Service

Where the Act requires notification, the *Acts Interpretation Act 1954* provides that the expressions deliver, give, notify or serve may be satisfied by serving the document by either delivering it to the person personally or sending it by post, telex, facsimile or similar facility to the place of residence or business last known to the person serving the document.

This means, where possible, serving of the notice should reflect the nature of the document being served.

What is appropriate for a longer period of notice might not be appropriate for short notice periods such as a 24-hour entry notice.

If a dispute is likely to arise, it is better to err on the side of caution.

For instance, you might phone ahead as well as serve the notice. Use more than one means of service or allow an extra day just to ensure adequate notice is given.

Serving Notices by Post

When notices are served by post, the sender must allow time for the mail to arrive when counting the days and working out the date for the notice period to end.

In most regions, it is normal to allow 2 days for the mail to arrive, 1 day for the day it is posted and 1 day for the day the notice arrives at the address.

This means that the first day counted in the notice period is the day after the notice arrives at the address.

This is the same for street addresses and post boxes. For remote areas, the sender should check with the Post Office to ensure the delivery time in the area.

Serving Notices in Person and Electronically (Fax)

When serving notices in person, the server does not count the day of service in the notice period. The first day of the notice period should be the day after the notice is served.

The same rule applies if notice is served electronically by fax. The fax transmission report may be used as proof of the time and date of service.

Further Information

The *Residential Tenancies Act 1994* is the primary source material on the law and takes precedence over this Fact Sheet should there be any inconsistency between the Act and this Fact Sheet. For more information about the *Residential Tenancies Act 1994*, contact the Residential Tenancies Authority. Contact details are at the bottom of this Fact Sheet.

Accessing RTA forms

The RTA's approved forms can be obtained by:

- visiting the RTA's website at www.rta.qld.gov.au and following the links to "e-Forms"
- calling the RTA's forms distribution service on **1300 136 939**
- faxing a *Request for Forms* to (07) 3216 2258, or
- posting a *Request for Forms* to PO Box 517, Virginia Qld 4034.

A selection of the most commonly used forms is also available at Australia Post offices around Queensland.

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