# Detailed Reference Guide 3: New process for repeated late or non-payment of rent

This reform starts on 29 March 2021.

## New requirements

A rental provider may give the renter a 14-day notice to vacate when 14 days or more of rent is owed.

A ‘strike’ system applies where the first four times in a 12-month period a renter is given a notice to vacate for non-payment of rent are treated differently to the fifth and subsequent times a notice is given.

### What is a 12-month period?

A 12-month period is the first 12 months of a rental agreement, and each subsequent 12-month period of the rental agreement.

### The first 4 times a notice is given

The first 4 times in a 12-month period a renter is given a notice to vacate, if they pay all the unpaid rent on or before the termination date in the notice, the notice is of no effect. This means that if the rental provider applies to VCAT for a possession order, VCAT must dismiss the application.

If the renter does not pay all the unpaid rent on or before the termination date in the notice, the rental provider may apply to VCAT for a possession order.

In determining whether to grant a possession order, VCAT may:

* issue a possession order, or
* place the renter on a payment plan to meet the outstanding rent.

VCAT may place the renter on a payment plan if it considers that satisfactory arrangements can be made to avoid financial loss to the rental provider.

If the renter is placed on a payment plan, the application for a possession order will be adjourned, and the rental agreement will continue. If the renter complies with the plan by paying off the unpaid rent, VCAT must dismiss the application for the possession order.

If the renter does not comply with the payment plan, VCAT may make a possession order.

In deciding whether to place the renter on a payment plan, VCAT may refer the renter to a financial counselling service for assessment of their ability to comply with a payment plan.

### The fifth and subsequent times a notice is given

If a renter has received four notices in a 12-month period, they will accrue ‘4 strikes’ against their name. If no more notices are received during that period, the strikes will be cleared when the 12-month period ends.

However, if a fifth or subsequent notice is given in the same 12-month period, the rental provider may apply to VCAT for a possession order at the end of the 14-day notice period, and VCAT may issue the order even if the renter pays the outstanding rent within the 14-day notice period.

Further, VCAT cannot dismiss the application solely on the grounds that the renter could pay off the unpaid rent under a payment plan.

### Possession order made by VCAT

When deciding whether to make a possession order, VCAT must consider whether doing so would be reasonable and proportionate, having regard to:

* the nature, frequency and duration of the conduct of the renter
* whether the breach is trivial
* whether the breach was caused by the conduct of any person other than the renter
* whether the renter, resident or site tenant has made an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order
* whether the breach has been remedied as far as is practicable
* whether the renter has, or will soon have, capacity to remedy the breach and comply with any obligations under the residential rental agreement
* the effect of the conduct of the renter
* whether any other order or course of action is reasonably available instead of making a possession order
* as the case requires, the behaviour of the rental provider or their agent
* any other matter the Tribunal considers relevant.

### Claim for compensation by rental provider for unpaid rent

A rental provider may apply to VCAT for a compensation order for unpaid rent if the unpaid rent is at least 14 days overdue.

However, if the renter has paid the rent at least 14 days late on two previous occasions, the rental provider will not be required to wait for the rent to be at least 14 days overdue before applying to VCAT for a compensation order.

## Previous requirements

A rental provider could give a renter a 14-day notice to vacate when 14 days or more rent was owed. No ‘4 strikes’ system existed where if a renter paid the outstanding rent the notice would be of no effect. VCAT could dismiss the application, but it was not clear when VCAT was required to do so.

When determining an application for a possession order VCAT was able to consider the appropriateness of a payment plan but was not able to refer the renter to a financial counselling service for assessment.

A rental provider could only apply to VCAT for a compensation order if the renter had failed to pay the full amount of rent for at least 14 days. If a partial payment had been made a compensation order could not be sought.

## Relevant legislation in the *Residential Tenancies Act 1997*

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| 91ZM | Non-payment of rent |
| 213 | Compensation for unpaid rent |
| 330 | Order of Tribunal |
| 330A | What is reasonable and proportionate? |
| 331 | Order to be dismissed or adjourned in certain circumstances |

Note: This was Reform 77 in the Fairer Safer Housing review.