

4.6 Abandoned Premises and Goods

Abandoned premises

The premises may be considered abandoned when the tenant leaves the premises and stops paying rent without giving or having been given notice to terminate the agreement. The owner may apply for an order from the court that the premises are abandoned, however this is optional (*Residential Tenancies Act (1987)*, section 77).

To avoid confusion over whether rented premises are abandoned, it is important that the tenant notifies the owner if they are going to be away from the property for a period of time (for Homeswest tenants they should notify Homeswest if they are going to be away for more than two weeks).

The tenant can still be charged for costs incurred from breaching the tenancy agreement if they abandon the property.

Where the tenant under an agreement abandons the premises, the owner is entitled to compensation from the tenant for any loss this causes them, including loss of rent. The owner has an obligation to take all reasonable steps to keep the costs as low as possible (s. 58 and s. 78).

A tenant with a fixed term agreement does not avoid break of lease costs by abandoning the premises. The tenant may still be liable for all the costs to re-let the premises, including advertising costs and break of lease fees (if the premises are rented through a Real Estate Agent), and rent until the agreement expires or new tenants move in. A tenant under a periodic agreement may be liable for rent in lieu of the required notice period of 21 days. See chapters [4.1 Ending a Periodic Tenancy](#) and [4.2 Ending a Fixed Term Tenancy](#) for more information.

Abandoned Goods

Where an agreement is terminated (it may be considered terminated if the tenant abandons the premises under section 60(1)(f) of the Residential Tenancies Act), and goods are left on the premises, the owner/agent may remove and dispose of or destroy the goods (s. 79(1)) if:

- (a) the goods are perishable foodstuffs, or
- (b) the estimated value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.

The owner/agent can only start these actions **2 days after** the tenancy agreement was terminated.

The owner may request a statement from the Commissioner of Fair Trading that it is reasonable to remove and destroy or dispose of particular goods (s. 79(4)).

The owner may dispose of perishable goods after two days; other goods must be stored for 60 days.

Where goods are left on the premises and they are not disposed of under the provisions the owner must store them in a safe place for a period of not less than 60 days,

Where the owner has stored the goods s/he must inform the tenant of this within 7 days, either by writing to the tenant at their forwarding address or by putting a notice in a newspaper with daily statewide circulation (s.79(3)).

The tenant may reclaim goods held by the owner within 60 days. However, the tenant must first pay the owner any reasonable cost incurred to remove and store the goods, (s. 79(7)). The tenant does not have to pay the owner any money owed for any other reason than to reclaim the goods.

The former tenant may reclaim abandoned goods after paying the owner the removal and storage costs.

After 60 days the goods may be sold at a public auction. The owner may deduct from the proceeds of the sale any money owed to her/him by the tenant and the cost of removal and storage of the goods.

If there is a surplus of funds the owner MAY pay the surplus into the Rental Accommodation Fund via the Local Court (s. 79(10)). A receipt to this effect is sufficient to discharge the owner from any further liability for the money or the goods. This is optional. The owner is not obliged to pay any surplus funds to the Rental Accommodation Fund or to the owner of the goods.

If the owner refuses to return the goods on payment of the removal and storage costs or if there is any other dispute over abandoned goods the tenant may apply to the Small Disputes Division for a resolution of the problem (s. 79(15)).

This application is similar to an application for a Performance Order under section 15 of the *Residential Tenancies Act (1987)*. See chapter [6.1 Seeking a Performance Order from the Local Court](#) for more information. The application should be made on a **Form 12: General Court Application** and under section 79(15) as the Magistrate then has jurisdiction to hear any

dispute over abandoned goods and make any relevant order. For more information about the **Form 12**, see chapter [6.3 Going to Court](#). Also see chapter [1.12 Community Contacts](#) for getting assistance with making a court application.

OWNER OR AGENT?

It is important to know that whilst you may be dealing directly with the real estate agent about your tenancy, it is the owner who takes on all the landlord responsibilities under the *Residential Tenancies Act (1987)*. If the agent or owner does something wrong and you have to fill out a breach notice or go to court, it is the owner you will list on the forms and notices.

List of Tenants' Rights Manual chapters referred to in this info sheet:

- [1.12 Community Contacts](#)
- [4.1 Ending a Periodic Tenancy](#)
- [4.2 Ending a Fixed Term Tenancy](#)
- [6.1 Seeking a Performance Order from the Local Court](#)
- [6.3 Going to Court](#)