

4.08 Superior Title Claim

Have you received a letter or notice telling you that the property you are renting is being taken over because the owner is no longer in charge of the property? If so, the letter is probably from someone claiming “superior title”.

What is superior title?

A person who is claiming “Superior title” is claiming a better right of ownership over the property than the current owner. This can happen, for example, when:

- the current owner is not keeping up with mortgage payments to the bank, and the bank wants to take over the property;
- the current owner has died with mortgage payments still owing to the bank and the bank wants to take over the property; or
- Government authorities take over a property for redevelopment purposes such as roads, etc.

What effect does this have on my tenancy?

If you have been granted the right to occupy a residential property or part of a residential property in return for valuable consideration (usually for rent or work on the property), then you do still have a tenancy.

**Remember: your tenancy agreement is between you and the owner
(as named on the tenancy agreement)**

Until the person claiming superior title actually takes or becomes entitled to take possession of the premises (usually via a court order) your tenancy agreement still exists and you remain bound by the agreement with the original owner. You (and the owner) must continue to honour your agreement with each other which includes you paying rent to the original owner. Your agreement with the original owner will continue until it is terminated – usually by a court order.

**It is illegal for any person to evict a tenant without a court order
Penalty : \$4000**

Will I be evicted?

It is important to note that while you do still have a tenancy; it is likely you may be evicted with very short notice if the person claiming superior title obtains a court order for possession of the premises. You should contact the owner/agent of the property about the situation as soon as you receive any notice that the property you are renting is being taken over.

Can I claim compensation?

If the new owner obtains a court order that forces you to vacate the property, you can seek compensation from your original owner for a breach of your right to quiet enjoyment of the premises (see chapter [3.03 Privacy and Quiet Enjoyment](#) (notice of entry requirements). Likely amounts you could claim include any reasonable out of pocket expenses incurred as a result of being forced to move, such as utility reconnections and removalist expenses. See chapter [3.09 When the Owner is in Breach of the Agreement](#) for more information.

Always keep a copy of any letters you send to the owner/agent plus any receipts for out of pocket expenses incurred as a result of the breach

Do I have to wait for the new owner to obtain a court order before moving?

You do not have to vacate the property until the new owner obtains a court order for possession of the property. However be aware that if the new owner obtains a court order, they may seek to force you to vacate the property, often at very short notice.

Should you wish to vacate the property prior to this occurring, you will need to contact your current owner/ agent and seek to terminate your agreement usually by:

- Obtaining permission in the form of a written agreement between the current owner and you terminating the tenancy, or
- If you are a periodic tenant you may provide 21 days written notice to the owner terminating the agreement.

If the new owner has not yet taken possession of the property and you 'break your lease' by leaving the property prior to the agreement terminating without the consent of the owner, or without providing the required notice (if you are a periodic tenant), you will be liable to the owner for continued rent payments (and possibly other amounts) until such time as your tenancy agreement is terminated.

What does Section 81 mean?

Section 81 of the Residential Tenancies Act directs a court not to make an order terminating a tenancy agreement when a person is claiming superior title unless the tenant has received reasonable notice of the proceedings.

You must get reasonable notice if a person claiming superior title makes an application to the court to evict you.

Can I stay in the property? What if I can't move out?

If an application is or has been made to the court seeking possession of your rented property by a person with superior title, you have the right under section 81 to apply to the court yourself, asking for an order vesting a tenancy in the new owner. In effect, you will be asking the Court to impose the obligations of a landlord on the new owner, on whatever terms and conditions the court thinks fit.

To apply for a court hearing at the Magistrates Court, you will need to fill out a Form 12: General Court Application. This form can be downloaded from the Tenants Advice Service website at www.taswa.org

The Court will hear both sides of the story and decide whether you can stay and if so, under what terms and conditions. See chapters 6.03 Preparing for Court and 6.04 Going to Court for more information about court costs, what to expect on the day and how to prepare.

If you require further information or support please call TAS' free advice line for tenants (Metro Ph: 9222 0888; Country Ph: 1800 621 888) or contact your nearest tenant advocate (see chapter 1.12 Community Contacts for details).

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

- 1.12 Community Contacts
- 2.08 The Tenancy Agreement
- 3.13 Writing a Letter to the Owner/Agent
- 3.03 Privacy and Quiet Enjoyment (notice of entry requirements)
- 3.09 When the Owner is in Breach of the Agreement4.7 Evictions
- 6.03 Preparing for Court
- 6.04 Going to Court