



Renting

This chapter is for residential or commercial tenants and landlords who have been affected by the February 2009 Victorian bushfires. It will explain your legal options and rights, and what you can do to get help.

Damaged or destroyed residential property

What do I do if I am renting a house that has been damaged or destroyed by the bushfires?

If you are the tenant (you are renting) and the house is unfit to live in, you do not have to keep living there. You will need to end the lease. There are two ways to do this:

- get agreement from your landlord or agent that your house is 'unfit for habitation'. It is best to get this agreement in writing. If you get an agreement, you do not have to give notice
- give your landlord an immediate notice of intention to vacate, and move out. You can use Consumer Affairs Victoria's Notice to Landlord of Rented Premises form available on their website at www.consumer.vic.gov.au (click on 'Renting > Forms and Publications').

For more information about giving notice, read the Tenants Union of Victoria's fact sheet Notices to Vacate on their website at www.tuv.org.au (click on 'Resources > Fact sheets' and look in the 'Residential tenants' section).

If you have been paying rent by direct debit make sure this is cancelled. If you do not have the landlord or agent's details, contact Consumer Affairs Victoria for help on 1300 558 181.

What do I do if I own the house?

If you own the rental house and it is unfit to live in, you can end the lease by giving the tenant an official Notice to Vacate to Tenant/s of Rented Premises. This form is available on the Consumer Affairs Victoria website at www.consumer.vic.gov.au (click on 'Renting > Forms and Publications').

You cannot make a tenant move out immediately so try to work out an agreement with the tenant. You do not have to help the tenant find another place to live in but your help in doing so at this time is appreciated.

You are allowed to inspect an unfit property but you must let the tenant know in advance that you are doing this (if they still live there).

Can I challenge a notice?

Landlords or tenants can challenge a notice and apply to shorten the length of the lease through Victorian Civil and Administrative Tribunal (VCAT). VCAT has the power to order that the lease be shortened or stopped. VCAT have made special arrangements for bushfire-related hearings to be run faster. VCAT has also set up its Bushfire Information Line on 1800 001 099 and you can email them about bushfire-related issues at vcat@vcat.vic.gov.au with the words 'Bushfire priority' in the subject header.

My house or unit has been damaged but is still okay for me to live in. What can I do?

If you are renting, you need to contact your landlord or agent immediately to talk about whether the repair needed to fix the damage is 'urgent'. Urgent repairs include:

- fire or storm damage
- burst water service
- blocked or broken toilet system
- serious roof or gas leak
- dangerous electrical fault
- flooding or serious flood damage
- broken or faulty services such as hot water, water, cooking, heating or laundering
- faulty gas, water or electricity supply
- anything that supplies water and is not working properly so that a lot of water is, or will be, wasted
- anything that makes the property unsafe or insecure, for example, locks not working
- serious faults in a lift or staircase.

Your landlord should do urgent repairs without delay, even if your landlord has not yet gotten their insurance payout from the insurer. If repairs are not done within two to three days, you can apply to VCAT for the repairs to be carried out. Your landlord may have to cover the cost for things that you had to pay for because the repairs were not done urgently (such as having to stay in a hotel).

If you cannot contact your landlord, you can get the urgent repairs done by a professional, up to the cost of \$1000. If you cannot afford to pay for this or the repairs are over \$1000, you can apply to VCAT. VCAT must hear any application for urgent repairs within two business days and can order the landlord to pay for the repairs. VCAT is making special arrangements for bushfire-related hearings .

If the damage is not urgent, you can give a notice to the landlord for the repairs to be carried out within 14 days.

The house is okay but since the bushfires, I no longer wish to live here. What can I do?

If you no longer want to live in the house, for example, because you have bad memories of the bushfires, try to talk about this with your landlord or agent. If the landlord does not agree to you wanting to move out and you are on a month-to-month lease, you can give a 28-day notice of intention to vacate. If you leave the house without the landlord's agreement before the notice period has finished or before the end of a longer

lease, you may have to pay some money the landlord. Contact the Tenants Union of Victoria's Advice Line on 9416 2577 for advice about what to do.

My house or unit was burnt down or damaged by the bushfires and there is a lot of ash and debris. Who should clean this up?

Landlords are responsible for clearing away ash, dirt and debris caused by the bushfires, on the house and the garden area. If the property is dirty because of bushfires and because of a tenant's use, the landlord may have it cleaned professionally and should negotiate the share of the costs with the tenant.

The utilities have been cut off because of the bushfires. Who should arrange for these to be put back on?

If the utilities are not working because the house has been damaged, the landlord should fix the damage. If there is no damage to the house, the tenant should arrange for these to be put back on.

For a list of water, gas and electricity retailers visit the 'For Consumers' section of the Essential Services Commission's website at www.esc.vic.gov.au. By clicking on either the 'Energy' or 'Water' links, you will be able to see a list of energy (gas and electricity) and water companies in your area.

Can the rent be put up?

There are laws that landlords have to follow when they want to increase rent. These laws mean that rent can only be increased once every six months during a month-to-month lease or that rent cannot go up during a fixed-term lease unless this is in the written lease agreement.

If a landlord is able to and wants to increase the rent, they must give the tenant at least 60 days written notice using the official Notice of Rent Increase to Tenant/s of Rented Premise form. This is available on the Consumer Affairs Victoria website at www.consumer.vic.gov.au (click on 'Renting > Forms and Publications').

What if I have lost my lease documents?

If your lease or other documents have been lost, check with your landlord or agent to see if they have a copy. If you cannot find any documents, you and your landlord or agent can write out the same lease or negotiate and make a new agreement.

Bonds

Can I get my bond back?

If you are renting, you should be able to get your bond back (minus any rent that is still owed) if your house or unit can no longer be lived in and your lease has been 'terminated'.

Your bond should have originally been lodged by the landlord with the Residential Tenancies Bond Authority. You will need to 'claim' back your bond from the landlord through the Residential Tenancies Bond Authority by filling in a form and sending it to them. You can prepare and print out Repayment Claim forms at www.rentalbonds.vic.gov.au. The Residential Tenancies Bond Authority will usually repay you the bond

within 24 hours of getting a completed form. Remember, do not sign a blank bond form. Only sign if the 'amount to be paid to tenant' part has been completed.

The usual rules for bond refunds apply if the house can still be lived in but your lease is not finished.

For more information about bonds, read the Tenants Union of Victoria's fact sheet Bonds on their website at www.tuv.org.au (click on 'Resources > Fact sheets' and look in the 'Residential tenants' section) and contact the Residential Tenancies Bond Authority on 1300 137 164.

If you are a landlord, you can only get back bond money at the end of a lease and if rent is owed or you had to get repairs or cleaning done because of the tenant (and not bushfire damage).

I am behind on my rent – will this affect my bond?

Yes. Some or all of the bond may be paid to the landlord.

If you cannot come to an agreement with your landlord or agent, you must apply to VCAT for an order directing the Residential Tenancies Bond Authority on how the bond is to be repaid. VCAT is making special arrangements for bushfire-related hearings.

How are bonds recovered where a tenant is injured or has died in the bushfires?

If you are renting and you are unable to sign, and the landlord or agent thinks you are injured and agrees to repay the bond, the words 'Bushfire injured' should be written in the signature box for you.

If you are a landlord and your tenant has died and a formal proof of death is available, this should be faxed to the Residential Tenancies Bond Authority with the Repayment Claim form. Acceptable proof includes a death certificate, a funeral director's account for the funeral of the deceased or a confirmation of death issued by a police officer, doctor of medicine or hospital administrator. Reimbursement of the bond will go to the estate of your deceased tenant.

If a formal proof of death is not available and you believe your tenant has died, the words 'Bushfire Deceased' should be written in the signature box for that tenant. The Residential Tenancies Bond Authority will treat the words 'Bushfire injured' and 'Bushfire deceased' as if the tenant had signed the form.

Commercial properties

Landlords and tenants should always check their lease to see if it specifically states what happens when part of the property is damaged. If the landlord does not repair the property within a reasonable time, the tenant may end the lease. If the landlord thinks that the repairs are impractical, they may end the lease.

If the lease is made under the Retail Leases Act 2003, the landlord must maintain the property in the same condition that it was originally leased in. This includes:

- the structure of the premises (the building, garage etc)
- the fixtures of the premises (lights, curtains etc)
- the equipment at the premises (for example, stoves or refrigeration in a restaurant)
- the appliances and fittings to provide gas, electricity, water and drainage to the premises that are supplied by the landlord.

If you are a landlord, you do not have to fix any problems caused by your tenants misusing the premises or equipment. The lease does not cover any equipment that the tenant must remove at the end of their tenancy.

If you are a tenant and the repairs are urgent and needed so you can continue your business, you can arrange for them to be done if you cannot contact your landlord. Your landlord can later reimburse you. You must take all reasonable steps to make contact with the landlord.

What if I can't reach an agreement with my landlord or agent?

If your property is leased under the Retail Leases Act 2003 and you are having problems agreeing with your landlord or agent, contact the Office of the Victorian Small Business Commissioner on 132 215 or 1800 136 034. They can help you and your landlord or agent to reach an agreement. If this does not happen, you may apply to VCAT for assistance.

What about other commercial leases?

If your lease is not under the Residential Tenancies Act 1997 or the Retail Leases Act 2003 and your dispute involves a small business, you can apply to the Office of the Victorian Small Business Commissioner for mediation of the dispute. If the dispute is not sorted out at mediation, it may need to be dealt with through VCAT.

Who is responsible for insurance?

Depending on the lease, the tenant may need to insure the rental property. If the tenant was supposed to do this but did not, the tenant may have to pay the landlord for damage done to the property by the bushfires. If the tenant has insurance but it does not cover the costs of rebuilding the property to what it was like before the bushfires, the tenant may have to pay to make sure the property is restored.

This is a complex area of the law. As a start, tenants and landlords can **see** the 'Insurance' and 'Property' chapters. You should get legal advice too. **See** 'Where to get help'.

Other useful Handbook chapters

See 'Debt', 'Insurance', 'Property', 'Relief' and 'Utilities'.

DISCLAIMER

The information contained in this chapter of the Bushfire Legal Help Handbook is intended to provide general information on legal topics, current at the time of first publication. The contents do not constitute legal advice, are not intended as a substitute for legal advice and should not be relied on as such. You should get legal advice in relation to your individual circumstances and any particular matters you may have.

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