

WHEN YOU MUST PAY \$ TO THE TENANCY TRUST ACCOUNT

There are a number of circumstances in which a landlord must pay money to the Commissioner of Tenancies.

Abandoned Goods

Section 109 allows a landlord to sell goods that have been abandoned by a tenant at an auction. The process set out in that section must be followed prior to sale of the goods.

Once the goods are sold, and all allowable deductions have been made, the remaining proceeds of sale must be paid to the owner of the goods. If the owner cannot be located, the money must be paid to the Commissioner of Tenancies.

Uncollected Security Deposit

If any monies relating to a security deposit have not been returned to the tenant within six months of the termination of the tenancy, and the tenant cannot be located, that money must be forwarded to the Commissioner within 28 days.

Any money paid to the Commissioner under these provisions must be paid by cheque made out to the 'Tenancy Trust Account' and must be accompanied by details of the tenancies to which the money relates.

KEEPING A SECURITY DEPOSIT WHEN A PROPERTY IS ABANDONED

Where a tenant abandons a tenancy, section 112(6) allows a landlord to hold the security deposit on trust, pending a claim for compensation for

either loss of rent or the costs of securing new tenants.

Please note, a landlord must **apply to the Commissioner** under section 122 within **3 months** of the tenant abandoning the premises. If an application is not received within this time, a landlord is not entitled to retain any of the security deposit under s112(6) for compensation.

When issuing an RT03 Form (*Notice by Landlord to Tenant to Remedy Breach of Agreement – Unpaid Rent*) – make sure the dates are correct and the amount of rent owing is accurate. The Commissioner's Delegate has very little discretion when dealing with these applications. The form must be compliant if your application is to succeed.

AFFIDAVITS

An affidavit is a legally binding, sworn document and must be accurate if it is to be accepted as evidence to support your application.

When you are filling out an affidavit, please ensure that you read the form thoroughly and put a line through **all** the options that do not apply.

COMMENCING A TENANCY

It has been reported to the Commissioner on a number of occasions that landlords/agents are allowing tenants to commence a tenancy before the property is habitable and meets all health and safety requirements.

This is a breach of sections 47 and 48, and can lead to significant disputes about repairs and maintenance.

It may also lead to applications by the tenants for discounted rent while the property is not habitable.

The best approach is to wait until a property complies with the Act before commencing a tenancy.

PROPERTY CONDITION REPORTS

The Commissioner has noted a number of problems with the way property condition reports are currently being completed.

The main problem is that the reports are not clear. It is often difficult to distinguish between the comments made by the agent and the tenant, and to ascertain whether the comments relate to the ingoing or outgoing condition report.

These reports are your evidence when applying for compensation, so if they are not clear, the Delegate will be unable to make a favourable determination.

PLEASE NOTE

A landlord/agent must sign the actual property condition report before sending it to the tenant. It is not sufficient to sign a cover letter and attach the report.

The **ingoing** report must be signed by the landlord or agent no later than **3 business days** after a tenant takes possession of the premises.

Within **5 business days** of receiving the condition report, the tenant may accept and sign the report, or mark and initial any changes and return the report to the landlord/agent.

The **outgoing** report must be signed by the landlord/agent and given to the tenant within **3 business days** of the tenant giving up possession.

If the tenant has abandoned the premises, an outgoing report must be completed, signed and posted to the tenant's last known residential, business or postal address.

PERIODIC INSPECTIONS

We understand that some agents are conducting periodic inspections, even though a tenant has not responded to their letter advising of the inspection time.

It should be noted that an agent/landlord is **only** entitled to enter a tenant's property to conduct a periodic inspection if the tenant has agreed with the time and date of the proposed inspection at least 7 days beforehand.

A letter sent by an agent advising of a periodic inspection is not authorisation for the agent to enter. It is only a request – you must receive a response from the tenant either in writing, in person or over the phone.

Similarly, if a landlord wishes to inspect the property between periodic inspections, verbal or written consent must be obtained from the tenant.

Sending a letter advising of a proposed inspection does not automatically authorise an agent/landlord to enter the property.

If a tenant refuses to allow an agent or landlord to enter the property to conduct inspections, an application must be made to the Commissioner under section 77 for an order authorising them to enter.