

BREACH OF DUTY BY TENANT PROCEDURE

Procedure number	PPOL010P	Version	v1.0
Drafted by	Program Development Manager	Approved by Board on	22 February 2017
Responsible Person	Program Director	Scheduled Review Date	22 February 2019

1. RESPONSIBILITIES

1.1 Landlords are responsible for following these procedures.

2. PROCEDURES

- 2.1 If a written complaint is received and / or property-related concerns are noted during an inspection:
- a. undertake an investigation of the allegations made in the complaint, utilising relevant evidence including CCTV, photos, audio recordings, inspection reports and interviewing witnesses
 - b. advise the complainant that their identity may be disclosed and, if legal action is required, they may be asked to testify
 - c. note down the details of the property-related concerns identified during the inspection.
- 2.2 Discuss the property concerns / allegations with the tenant:
- a. advise the tenant of the property concerns / allegations made against them, ensuring not to disclose the identity of the complainant (if applicable and possible)
 - b. give the tenant an opportunity to provide their side of the story
 - c. advise the tenant of the next steps in the investigation and action that may be taken, including the possibility of a Breach of Duty Notice being issued. Ensure that you fully explain what a Breach of Duty Notice is, the consequences of one being issued and the implications for non-compliance with a notice that has been issued.
- 2.3 Provide an opportunity for the tenant to remedy the situation before taking further action.
- 2.4 If the matter is not able to be resolved informally and if satisfied that the requirements for a notice have been met, prepare a Breach of Duty Notice:
- a. include the relevant section of the Residential Tenancies Act that has been breached.
 - b. clearly set out the details of the incident (including date and time etc) and how the tenant's actions have breached the section of the Act and impacted on others
 - c. state the proposed remedy, describing what is expected of the tenant now and in the future
 - d. serve the notice on the tenant by both Registered Post and surface mail.

- 2.5 If, after the required date, a second written complaint is received or the property-related concerns identified in the breach notice have not been adequately remedied within the specified timeframe in respect of the same tenant, repeat steps 2.1 to 2.4.
- 2.6 Following the issuing of a Breach of Duty Notice, make an application for a Compliance Order with VCAT, either online (if within 90 days of the issuing of the Breach of Duty Notice) or via a hardcopy application form (if over 90 days since the issuing of the notice).
- 2.7 Serve a copy of the application seeking a Compliance Order to the tenant by both Registered Post and surface mail, and include a copy of the Breach of Duty Notice(s).
- 2.8 If the tenant does not remedy the breach within a reasonable timeframe, prepare a submission to VCAT:
 - a. collate the necessary information, including file notes, complaint documentation and evidence collected
 - b. state the way(s) in which the tenant is failing to meet their obligations
 - c. provide a chronology of the action taken, including prior attempts to work with the tenant to resolve the matter
 - d. state the order being sought, with clear justification to support it
 - e. state the names of the witnesses who will attend
 - f. include a copy of the Breach of Duty Notice
 - g. submit the application and all attachments to VCAT
 - h. provide a copy of the VCAT application and all attachments to the tenant.
- 2.9 During the VCAT hearing:
 - a. give a brief introduction to the matter and state what order is being sought
 - b. present the evidence and question the witnesses.
- 2.10 If at the conclusion of the VCAT hearing, an order is made, explain to the tenant what the order means and ensure that they fully understand what is required of them.

3. RELATED DOCUMENTS

- 3.1. Breach of Duty Program Policy.

4. AUTHORISATION

Approved by	CEHL Board	Date of approval	22 / 02 / 2017
Position	CEHL Chair		Karren Walker
Position	Manager		Nicola Foxworthy