# Summary of proofs for possession applications by Rooming House Operator

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| HEARING DETAILS |
| **VCAT number: R2021/**  **Date of hearing:**       /       /  **RH Operator/s:**                                                                         **Agent (representing RH Operator at hearing):**  **Residents:** |
| DETAILS OF RESIDENCY AGREEMENT |
| **Address of room:**    **Date residency commenced:**       /       / |
| SUMMARY OF APPLICATION |
| **When is the date of your VCAT application?**       /       /  **When did you send the application to the resident/s?**       /       /  **How did you send it?**  Electronically  Registered post  Ordinary post  By hand  **Address/es sent to:**    **Evidence of sending the application to the resident is attached on pages**       **to**      . |
| DETAILS OF NOTICE TO VACATE |
| **Grounds for the NTV:** Section        Ground                        (eg Repairs)  **What is the termination date in your NTV?**       /       /  **When did you send the NTV to the resident/s?**       /       /  **How did you send it?**  Electronically  Registered post  Personally (By Hand)  **Address/es sent to:**      **Evidence of sending the application to the resident is attached on pages**       **to**       . |

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| DETAILS OF APPLICATION |
| **What is the ground/s for seeking a possession order (briefly set out the facts which give rise to**  **the ground)?**      **What date for possession are you requesting?**       /       /  **Is the date you are requesting reasonable and proportionate, and if so, why is it reasonable and proportionate?**                                                                            **Do you have all the documents relevant to the application (see following pages detailing evidence)?**  Yes, attach copy  No |
| DECLARATION |
| **This form is declared to be correct and submitted to VCAT on**       /       /  **By name of person appearing at hearing:**  Rooming House Operator  Agent  **Signature of person appearing at hearing:** |

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| EVIDENCE AND DOCUMENTS REQUIRED FOR HEARING |
| You must attach, at least, the following documents:   * A copy of the Notice to Vacate and proof of service, * A copy of any documents required under section 142ZT of the *Residential Tenancies Act 1997* to be attached and served with the Notice to Vacate, * A copy of the Application and proof of service, and * A copy of any document, photograph or video that you rely on to support the grounds for the giving of the Notice to Vacate.   All evidence must be labelled with sequential page numbers with a cover sheet identifying the documents that follow. For example, if you are submitting 30 pages of evidence, the documents must be numbered 1-30.  Photographs should state the date they were taken and the location in the rooming house.  This summary of proofs and attached evidence should be sent to VCAT and the resident/s at least three business days before the hearing and state the Tribunal reference number and date and time of the hearing in the subject line of the email (eg R2021/0001 15 February 2021 @ 2pm). Evidence can be submitted to the Tribunal at [renting@vcat.vic.gov.au](mailto:renting@vcat.vic.gov.au).  For further information on [how documents should be submitted for the hearing](https://www.vcat.vic.gov.au/case-types/residential-tenancies/access-documents-residential-tenancy-case) and [how to prepare for your hearing,](https://www.vcat.vic.gov.au/the-vcat-process/prepare-to-come-to-vcat/prepare-for-the-hearing) refer to the [VCAT website](https://www.vcat.vic.gov.au/the-vcat-process/prepare-to-come-to-vcat/prepare-for-the-hearing). |
| REASONABLE AND PROPORTIONATE |
| For the purposes of determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following—  (a) the nature, frequency and duration of the conduct of the resident which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a residency right;  (b) whether the breach is trivial;  (c) whether the breach was caused by the conduct of any person other than the resident;  (d) whether the resident has made an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order and— (i) if an application has been made, whether a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is still in force; and (ii) if a notice or order was made, whether it included an exclusion condition; and (iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant;  (e) whether the breach has been remedied as far as is practicable;  (f) whether the resident has, or will soon have, capacity to remedy the breach and comply with any obligations under the residency right;  (g) the effect of the conduct of the resident on others;  (h) whether any other order or course of action is reasonably available instead of making a possession order;  (i) as the case requires, the behaviour of the rooming house operator,  (j) any other matter the Tribunal considers relevant. |

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| GROUNDS FOR POSSESSION AND EVIDENCE FOR THE HEARING |
| **Tick the relevant ground in the Notice to Vacate that supports your Application and detail the evidence provided.**  **Remove pages for any grounds that don’t apply.** |
| **s.142ZA: End of fixed term rooming house agreement: (28 day NTV)**  The resident is under a fixed term rooming house agreement, and before the end of the term of that agreement, has been given a notice to vacate the room in the rooming house at the end of the fixed term.  **A copy of the fixed term rooming house agreement dated**       /       /  **is attached on pages**        **to**       .  **The fixed term of the rooming house agreement ended on**       /       /       .  **The date of termination in the notice to vacate is**       /       /       **, which is on or after the date that the fixed term ended.**  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**    **Evidence (in support of why it is reasonable and proportionate) is:**                    **is attached on pages**        **to**       . |

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| GROUNDS FOR POSSESSION AND EVIDENCE FOR THE HEARING |
| **s.142ZB: Damage (Immediate NTV)**  The resident or the resident’s visitor, whether by act or omission, has intentionally or recklessly caused serious damage to a part of the rooming house. (This may include any safety equipment, or common areas)  **Are before and after photos of the damage attached?**  Yes,attached on pages        to         No  **Is there video of the alleged event/s?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **If the act was caused by a person other than the resident, should an order be made that the resident must not permit entry by that person to the room?**  Yes  No  **Why/why not?**                                                               **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**      **Can, and should, the Tribunal make a compliance order?**  Yes  No  **If so, why?**                                                                 **Are there any special requirements of the resident to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date?**  Yes  No  Don’t know  **If known, what are those special requirements?** |

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| **ss.142ZC: Danger: (Immediate NTV)** (**Note** the definition of “*endanger*” in the Director’s Guidelines)  **The resident, or the resident’s visitor, by act or omission, endangers the safety of**  (a) another resident of the rooming house; or  (b) occupiers of neighbouring properties; or  (c) the rooming house operator or the operator’s agent; or  (d) a contractor or employee of a person referred to in paragraph (c).  **Are photos attached?**  Yes,attached on pages        to         No  **Is there video of the alleged event/s?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’ – why?**      **If the act was caused by a person other than the resident, should an order be made that the resident must not permit entry by that person to the room?**  Yes  No  **Why or why not?**                                                          **If so, why?**                                                                **Are there any special requirements of the resident to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date? (s 333(1B))**  Yes  No  Don’t know  **If known, what are those special requirements?** |

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| **s.142ZD: Threats and intimidation: (14 day NTV)**  **The resident has seriously threatened or intimidated:**  (a) the rooming house operator or the operator’s agent; or  (b) a contractor or employee of a person referred to in paragraph (a).  **Are photos/ emails/ text messages attached?**  Yes,attached on pages        to         No  **Is there a video or a voice recording of the alleged event?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**      **Can, and should, the Tribunal make a compliance order?**  Yes  No  **If so, why?**                                                                 **Are there any special requirements of the resident to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date? (s 333(1B))**  Yes  No  Don’t know  **If known, what are those special requirements?** |

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| **s.142ZE: Disruption: (Immediate NTV)**  The resident, or the resident’s visitor has seriously interrupted the quiet and peaceful enjoyment of the rooming house by other residents.  **Are photos/ emails/ text messages attached?**  Yes,attached on pages        to         No  **Is there a video or a voice recording of the alleged event?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**      **If the act was caused by a person other than the resident, should an order be made under s 332A(3) that the resident must not permit entry by that person to the room?**  Yes  No  **If so, why?** |

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| **s.142ZF: Non-payment of rent: (2 day NTV)**  The resident owed the rooming house operator at least seven days rent when the NTV was given.  **The rent is $**        per  calendar month  fortnight  week  **As at the date the NTV was give, rent was paid up to and including**       /       /  **with $**        **on account. The effective paid to date was**       /       /       **.**  **As at today, the rent is now paid up to and including**       /       /  **with $**        **on account. The effective paid to date is**       /       /       **.**  **The rent owing to the date of hearing is $**       **.**  **A copy of rental ledger dated**       /       /        **is attached on pages**        of      **.**  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**                             **If the breach was caused by another person other than the renter, should an order be made under s 332A(3) that the renter must not permit entry by that person to the rented premises?**   Yes  No  **Provide reason why an order should or shouldn’t be made under s 332A(3)?** |

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| **s. 142ZG: Failure to comply with Tribunal order: (2 day NTV)**  The resident has failed to comply with an order of the Tribunal under section 212.  **A copy of the VCAT order dated**       /       /        **is attached on pages**        of     **.**  **Are photos attached?**  Yes,attached on pages        to         No  **Is there video evidence?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**  **Witness 2 – Name:**  **What other documentary evidence do you have?**      **This evidence is attached on pages**        to       .  **Was the breach trivial?**  Yes  No  **Why?**    **Has the breach been remedied as far as possible?**  Yes  No  **Why?**    **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.142ZH: Successive breaches by resident:** (2 day NTV)  The resident has breached a duty provision; and on 2 previous occasions the resident has been in breach of the same provision; and the resident has been given a breach of duty notice on each of the two prior occasions.  **First breach** A copy of the first breach notice dated       /       /        and proof of service  is attached on pages        of       .  **Are photos attached?**  Yes,attached on pages        to         No  **Is there video evidence?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness/es Name:**                                                            **Did the resident remedy the breach within the time given in the notice?**  Yes  No  **Second breach** A copy of the second breach notice dated       /       /        and proof of service  is attached on pages        of       .  **Are photos attached?**  Yes,attached on pages        to         No **Is there video evidence?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness/es Name**  **Did the resident remedy the breach within the time given in the notice?**  Yes  No  **Third breach**  **Are photos attached?**  Yes,attached on pages        to         No  **Is there video evidence?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness/es Name:**                                                            **What other documentary evidence do you have?**                            **This evidence is attached on pages**        to       .  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**                             **If the breach was caused by another person other than the renter, should an order be made under s 332A(3) that the renter must not permit entry by that person to the rented premises?**   Yes  No  **Why or why not?** |

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| **s.142ZI(1): Use of room for illegal purpose: (2 day NTV)**  The resident has used the room or permitted its use for a purpose that is illegal at common law or under an Act.  **Are photos attached?**  Yes,attached on pages        to         No  **Is there video evidence?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**  **Witness 2 – Name:**  **What other documentary evidence do you have?**      **This evidence is attached on pages**        to       .  **Is there police evidence or police charges?**  Yes,attached on pages        to         No  **What common or statutory law has the resident not complied with?**    **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.142ZJ: Sale of rooming house: (60 day NTV)**  (1) The rooming house is to be sold or offered for sale with vacant possession immediately after the termination date, or  (2) The rooming house operator has entered into a contract of sale of the rooming house, and the contract of sale is subject to one or more conditions which have now been satisfied, and the NTV was given within 14 days after the last condition was satisfied, or  (3) The rooming house operator has entered into a non-conditional contract of sale and the NTV was given within 14 days after the contract of sale was entered into.  **A copy of the Director of CAV approved documentary evidence required to accompany the**  **Notice to Vacate is attached on pages**        to       **.**  **Is there an authority to sell attached**?  Yes,attached on pages        to        No  **Is there a contract of sale attached**?  Yes,attached on pages        to        No  **Have the premises been sold?**  Yes – the date the contract was entered into was        /        /  and the settlement date is        /        /  No  **Were the premises sold with vacant possession?**  Yes  No  **Was the contract of sale subject to any conditions that entitled a party to terminate the contract, if not satisfied?**  Yes – the date the contract was entered into was        /        /  No  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.142ZK: Repairs or demolition: (60 day NTV)**  The rooming house operator intends to  repair,  renovate,  reconstruct or  demolish the rooming house immediately after the termination date, AND the rooming house operator has obtained all necessary permits and consents to carry out the work AND the work cannot be properly carried out unless the resident vacates the rooming house.  **A copy of the Director of CAV approved documentary evidence required to accompany the**  **Notice to Vacate is attached on pages**        to       **.**  **Will the proposed repairs, renovations or reconstruction affect the resident’s room, but not affect all the rooms in the rooming house?**  Yes  No  **If yes, is there a room equivalent to the resident’s room at an equivalent rent available for rent in the rooming house?**  Yes  No  **If yes, was the equivalent room offered to the resident, and refused, prior to the notice to vacate being given to the resident?**  Yes  No  **If yes, the date that the offer was made was**        /        /       **, the date the**  **offer was refused was**         /        /       **, and evidence of the offer and refusal**  **is attached on pages**        to       **.**  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.142ZN: Resident in transitional housing refuses alternative accommodation:  (30 day NTV)**  The room was provided as transitional housing; and the rooming house operator is Director of Housing (or a DOH delegate) who has published requirements for residents of [transitional housing](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s236.html#transitional_housing) to seek alternative accommodation; and the resident has (i) unreasonably refused to seek alternative accommodation in accordance with those requirements; or (ii) refused a reasonable offer of alternative accommodation made in accordance with those requirements.  **What evidence do you have that the resident has unreasonably refused to seek alternate**  **accommodation?**    **OR**  **What offer of alternate accommodation has been made to the resident?**    **Why is it unreasonable for the renter to refuse the offer?**    **Is there evidence attached ?**  Yes, **attached on pages**        to      No  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |
| **s.142ZP: Notice by rooming house mortgagee: (60 day NTV)**  The mortgagee of the rooming house, is entitled to possession of, or to exercise a power of sale in respect of, the rooming house under a mortgage.  **A copy of a Court order entitling the mortgagee to possession or to exercise a power of sale is attached on pages**        to       **.**  **Is the mortgage agreement attached?**  Yes,attached on pages        to         No  **The entitlement to possession or sale is at clause**        of the agreement on page       .  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.142ZQ: Tribunal order under Rooming House Operators Act 2016 (Termination date set by Tribunal)**  The Tribunal has made an order referred to in [section 33(1)(b)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s33.html), [34](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s34.html)(3)(c)(ii) or [83](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s83.html)(3)(c)(iii) of the *Rooming House Operators Act 2016* in relation to the rooming house operator.  **A copy of the VCAT order dated**        /        /        **is attached on pages**         of  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |
| **s.142ZR: Refusal of license under Rooming House Operators Act 2016: (120 day NTV)**  The residential rental provider intends to demolish the premises; (i) in the case of a building owned by a residential rental provider containing 5 or more rented premises, immediately after the last renter vacates; or (ii) in any other case, immediately after the termination date; **and** the residential rental provider has obtained all necessary permits and consents to demolish the premises.  (a) The rooming house operator’s application for renewal of a licence under the [Rooming House Operators Act 2016](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/rhoa2016286/) was refused by the Business Licensing Authority and [section 29(1)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s29.html) or [29](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s29.html)(2) of that Act apply; or  (b) The rooming house operator’s application for a licence under the [Rooming House Operators Act 2016](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/rhoa2016286/) was refused by the Business Licensing Authority and [section 82(2)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/rtaa201845o2018333/s82.html) of that Act applies.  **A copy of the Business Licensing Authority refusal dated**        /        /         **is attached on pages**        of       **.**  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |