

Summary of proofs for termination/possession applications

HEARING CONTACT DETAILS

VCAT number: R2020/ _____

CAV reference number: CAV/ _____ (Required if the application is on or after 13/5/20)

Landlord/s: _____

Agent/landlord phone number for the hearing (provide a direct number): _____

Tenant/s: _____

Tenant/s current phone number/s for the hearing: _____

DETAILS OF TENANCY

Address of rented premises: _____

Date tenancy commenced: ____ / ____ / ____

SUMMARY OF APPLICATION

What are you claiming:

To understand the difference between termination and possession, go to www.vcat.vic.gov.au/terminationpossession.

Termination Termination and Possession Possession

What is the date of your VCAT application? ____ / ____ / ____

When was the application served on the tenant/s? ____ / ____ / ____

How was the application served? Email Registered post Ordinary post

Address used for service: _____

DETAILS OF APPLICATION

If seeking a termination order (section 548 of the Residential Tenancies Act 1997)

What is the ground/s for seeking termination of the tenancy (include the relevant ground under s.549(2))?

If you are only seeking a termination order, what is the date you want the tenancy to terminate?

____ / ____ / ____

If also seeking a possession order (s.549(4)), what date for possession are you requesting?

____ / ____ / ____

Do you have all the documents relevant to the application (see following pages detailing evidence)?

Yes No

If seeking a possession order (section 550 of the Residential Tenancies Act 1997)

VCAT reference number for the termination order: R2020/_____

Date of the VCAT termination order: ____ / ____ / ____

What are the grounds for seeking a possession order? _____

Do you have all the documents relevant to the application (see following pages detailing evidence)?

Yes No

This form is declared to be correct and submitted to VCAT on ____ / ____ / ____

By name of person appearing at hearing: _____

Landlord Agent DOH

Signature of person appearing at hearing: _____

EVIDENCE AND DOCUMENTS REQUIRED FOR HEARING

You must attach all relevant evidence to support each claim. Evidence must be labelled with sequential page numbers. 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 rented premises.

See definitions below for:

- a COVID-19 reason
- reasonable and proportionate.

COVID-19 reason

A person is unable to comply with, or it is not reasonably practicable for a person to comply with, a term, provision or obligation because of a **COVID-19 reason** if—

- (a) the person is ill (whether or not the illness is COVID-19); or
- (b) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation as a result of the person's compliance with any of the following –
 - (i) the exercise of emergency powers by the Chief Health Officer or a person who is an authorised officer under the Public Health and Wellbeing Act 2008;
 - (ii) the exercise of public health risk powers by the Chief Health Officer or a person who is an authorised officer under the Public Health and Wellbeing Act 2008;
 - (iii) the exercise of a power or the giving of a direction under section 24(2) of the Emergency Management Act 1986 by the Minister administering that Act;
 - (iv) a recommendation that is publicly announced by the State or made by the Chief Health Officer in relation to the COVID-19 pandemic; or
- (c) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation without suffering severe hardship; or
- (d) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation as a result of any exceptional circumstances in relation to the COVID-19 pandemic.

Reasonable and proportionate

In determining what is reasonable and proportionate, the Tribunal must have regard to –

- (a) the nature, frequency and duration of the conduct of the tenant which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a tenancy agreement, residency right or site agreement;
- (b) whether the breach is trivial;
- (c) whether the breach was caused by the conduct of any person other than the tenant;
- (d) whether the tenant has made an application for a family violence safety notice, family violence intervention order, recognised 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 tenant has, or will soon have, capacity to remedy the breach and comply with any obligations under the tenancy agreement, as the case requires;
- (g) the effect of the conduct of the tenant on others as a tenant;
- (h) whether any other order or course of action is reasonably available instead of making the order sought;
- (i) as the case requires, the behaviour of the landlord or the landlord's agent;
- (j) any other matter the Tribunal considers relevant.

GROUNDS AND EVIDENCE

Tick all relevant grounds on which termination and/or possession have been sought in your application and detail the evidence provided. Remove pages for any grounds that don't apply.

s.549(2)(a): Damage

That the tenant or tenant's visitor has, by act or omission, intentionally or recklessly caused serious damage to the premises, including to any safety equipment or to any common areas.

Are before and after photos of the damage attached? Yes, attached on pages ___ to ___ No

Is there evidence from witnesses? Yes, attached on pages ___ to ___ No

Witness 1 – Name: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

What other documentary evidence do you have? Text messages Emails Invoices

These are attached on pages ___ to ___

Is the breach because of a COVID-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(b): Danger

That the tenant or tenant's visitor, by act or omission, endangers the safety of a neighbour, the landlord, an agent, employee or contractor of the landlord/agent.

Are photos attached? Yes, attached on pages ___ to ___ No

Is there video of the alleged event? Yes No

Is there evidence from witnesses? Yes, attached on pages ___ to ___ No

Witness 1 – Name: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

Is the breach because of a COVID-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(c): Threats and intimidation
That the tenant or other occupant has seriously threatened or intimidated the landlord, or an agent, contractor or employee of the landlord/agent.

Are photos attached? Yes, attached on pages ___ to ___ No

Is there video of the alleged event? Yes No

Is there evidence from witnesses? Yes, attached on pages ___ to ___ No

Witness 1 – Name: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

Is the breach because of a COVID-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If “reasonable and proportionate” – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If “reasonable and proportionate” – why? _____

s.549(2)(d): Failure to comply with order
That the tenant failed to comply with a VCAT order under s212.

A copy of the VCAT order dated ____ / ____ / ____ is attached on pages ___ to ___

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: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

Is it reasonable and proportionate to make a termination order? Yes No

If “reasonable and proportionate” – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If “reasonable and proportionate” – why? _____

**s.549(2)(e): Notice to leave
That the tenant was given a notice to leave managed premises under s368.**

A copy of the VCAT order dated ____ / ____ / ____ is attached on pages ____ to ____

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: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

Is the breach because of a COVID-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If “reasonable and proportionate” – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If “reasonable and proportionate” – why? _____

s.549(2)(f): Illegal use – That the tenant has used premises for an illegal purpose

s.549(2)(g): Drugs in DOH – If the landlord is the Director of Housing (DOH), that the tenant has trafficked, possessed, cultivated or supplied drugs, etc

s.549(2)(h): Indictable offence in DOH – If the landlord is the DOH, that the tenant has committed a prescribed indictable offence.

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: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

Is there police evidence or police charges? Yes, attached on pages ____ to ____ No

Is the breach because of a COVID-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If “reasonable and proportionate” – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If “reasonable and proportionate” – why? _____

s.549(2)(i): Failure to pay rent or comply with Act
The tenant has failed to comply with their obligations under the tenancy agreement or the Act, including by not paying rent, if the tenant could comply without suffering severe hardship.

1. How has the tenant/s failed to comply with the Act or tenancy agreement? (If it is due to a failure to pay rent only, skip to point 5.)

2. Are photos attached? Yes, attached on pages ___ to ___ No

3. Is there video evidence? Yes No

4. Is there evidence from witnesses? Yes, attached on pages ___ to ___ No

Witness 1 – Name: _____ Phone: _____

Witness 2 – Name: _____ Phone: _____

5. Is the breach due to a failure to pay rent?

Yes, rent ledger attached on pages ___ to ___ No

The rent is \$_____ per calendar month fortnight week

The rent (at the date of hearing) is paid up to and including ___ / ___ / ___ with

\$_____ on account.

The rent owing (at the date of hearing) is \$_____.

6. Could the tenant/s comply without suffering severe hardship Yes No

If yes, why do you believe the tenant/s could comply without suffering severe hardship?

7. Is the breach because of a COVID-19 reason? Yes No

8. Has each tenant completed a Financial Circumstances Statement?

Yes, attached on pages ___ to ___ No

9. Has the landlord provided evidence of their hardship?

Yes, attached on pages ___ to ___ No

10. Is it reasonable and proportionate to make a termination order? Yes No

If “reasonable and proportionate” – why? _____

11. Is it reasonable and proportionate to make a possession order? Yes No

If “reasonable and proportionate” – why? _____

s.549(2)(j): Selling premises
That the landlord has engaged an agent to sell, or prepared or entered into a contract of sale for rented premises.

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 settlement date is ___ / ___ / ___ No

Were the premises sold with vacant possession? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(k): DOH to repair, renovate or demolish
If the landlord is the DOH, that the landlord intends to repair, renovate or demolish, has permits and work cannot be done unless the tenancy terminates.

Is there a permit required and attached? Yes, attached on pages ___ to ___ No

Is there a schedule of works attached? Yes, attached on pages ___ to ___ No

What works are being carried out? _____

Why can't works be carried out while the tenant continues to occupy the premises? _____

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(l): Unfit for habitation**That the premises are unfit for human habitation or destroyed totally or to such an extent as to be rendered unsafe.**Are before and after photos of the damage attached? Yes, attached on pages ___ to ___ No

Is there an expert report or written evidence that the premises are unfit or unsafe?

 Yes, attached on pages ___ to ___ NoWhat other documentary evidence do you have? Text messages Emails Invoices

These are attached on pages ___ to ___

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(m): Misleading information for public housing**If the landlord is a public statutory authority, that the tenant knowingly misled the landlord about eligibility for housing.**

Why do you believe the tenant/s knowingly misled the landlord about their eligibility for housing?

Are before and after photos of the damage attached? Yes, attached on pages ___ to ___ No

Indicate any evidence you have attached which supports your belief:

 Text message, attached on pages ___ to ___ Emails, attached on pages ___ to ___ Application form, attached on pages ___ to ___ Other: _____, attached on pages ___ to ___Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

**s.549(2)(n): Assignment or sublet
That the tenant has assigned or sublet without consent.**

Why do you believe tenant/s have assigned or sublet the rented premises? _____

Indicate any evidence you have attached which supports your belief:

- Text message, attached on pages ___ to ___
- Emails, attached on pages ___ to ___
- Advertisement of the premises, attached on pages ___ to ___
- Other: _____, attached on pages ___ to ___

Are before and after photos of the damage attached? Yes, attached on pages ___ to ___ No

Is the breach because of a COVID-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

**s.549(2)(o): Landlord moving in
That the landlord, a close family member or someone who lives with and is dependent on the landlord is moving in.**

Who is moving into the rented premises, and why? _____

Is there evidence from landlord, landlord's relative or landlord's dependant attached?

Yes, attached on pages ___ to ___ No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(p): Premises required for public purpose**That the landlord is a public statutory authority and the premises are required for a public purpose.**

What public purpose are the premises required for? _____

Is there evidence attached? Yes, attached on pages ___ to ___ No

What are the documents you have attached as evidence? _____

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(q): Public housing criteria**That the landlord is a public statutory authority and the tenant no longer meets eligibility criteria.**

Why does the tenant no longer meet the eligibility criteria? _____

Is there evidence attached? Yes, attached on pages ___ to ___ NoIs it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(r): Pet
That VCAT has made an order for a pet to be excluded and the tenant has not complied.

A copy of the VCAT order dated ____ / ____ / ____ is attached on pages ____ to ____

Are photos attached? Yes, attached on pages ____ to ____ No

Is there video evidence? Yes No

Is there written evidence from witnesses? Yes, attached on pages ____ to ____ No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(s): Refusing transitional housing
That the landlord is the DOH, the landlord is providing transitional housing and the tenant unreasonably refuses an offer of alternative accommodation.

What offer of alternate accommodation has been made to the tenant? _____

Is there evidence attached? Yes, attached on pages ____ to ____ No

Why is it unreasonable for the tenant to refuse the offer? _____

Is the tenant/s failure to accept the offer due to a Covid-19 reason? Yes No

Is it reasonable and proportionate to make a termination order? Yes No

If "reasonable and proportionate" – why? _____

Is it reasonable and proportionate to make a possession order? Yes No

If "reasonable and proportionate" – why? _____

s.549(2)(t): Any prescribed matter
Any other prescribed matter.

Provide details: _____
