

Reclaiming possession of a rental property and how to deal with abandoned property

A landlord/agent must reclaim possession of a rental property lawfully and deal with any belongings left in the property as required under the *Residential Tenancies Act 1995* (the Act).

Taking vacant possession

A tenancy does not end until the tenant *hands over* vacant possession of the property and at times, this may not occur until after the termination date. Where it is clear that the tenant is still in the premises after the termination date without the landlord/agent's agreement, a person cannot take possession of the property without applying to the South Australian Civil and Administrative Tribunal (SACAT) for an order for vacant possession. In this instance, a landlord/agent who recovers possession of the premises without a SACAT order may be committing an offence.

Sometimes, it is unclear whether the tenant is still in the premises. Problems may arise where tenants have partially completed the moving out process. Tenants are encouraged to keep the landlord/agent updated when moving plans change or belongings are left in the premises to be collected at a later time.

If it is unclear whether a tenant has vacated the premises (ie the tenant and any other occupant have permanently left the property), the landlord/agent should first try to contact the tenant by phone. If there is no response the landlord/agent may attend the property and can take another person with them as a witness. Following arrival at the property they should knock on the door loudly and allow the tenant or any other occupant enough time to answer. If there is no response they can enter and should call out to the tenant as they assess and move through the property. If the landlord/agent is absolutely sure that the tenant has vacated the property and there is no one else in occupation of the premises, they can take possession of the premises.

If the tenant has not vacated and is still in possession of the premises, or if there is any doubt whether the tenant has vacated, the landlord/agent must apply to SACAT seeking an order for vacant possession of the premises.

Once SACAT has made an order for possession the landlord/agent cannot recover the premises unless the tenant voluntarily gives back possession. If the tenant refuses to *hand over* vacant possession of the property, or it is still unclear to the landlord/agent whether the tenant has vacated, the landlord/agent must then request a SACAT bailiff to attend the property to enforce the order. In this instance, a landlord/agent who recovers the premises without the bailiff in attendance may be committing an offence.

Abandoned property

Sections 97, 97A, and 97B of the Act clearly outline the landlord's responsibilities in regards to dealing with abandoned property. Personal documents are not included in abandoned property and must be dealt with as outlined in Section 97C of the Act.

The landlord may remove perishable goods from the property immediately after taking possession and then would need to determine the estimated value of the remaining property. The landlord must leave all other items at the property for at least two days after taking possession and allow the tenant reasonable access over this time to reclaim their items.

Valuable abandoned property

If the estimated value of the property is less than a fair estimate of the cost of removal, storage and sale of the property the landlord/ agent may dispose of the goods after two days.

As a safeguard, in case the tenant returns to claim the goods, it is recommended the landlord/agent keep a clear record of the goods that were left in the property.

If the estimated value of the property is more than the cost of removal, storage and sale of the property the landlord/agent must make reasonable attempts to notify the tenant that the property has been found in the premises and take reasonable steps to keep the property safe for at least 28 days. The tenant may reclaim the goods within this period after paying the reasonable costs incurred in dealing with the abandoned property.

Determining the estimated value of the property

The total value of all the goods needs to be considered. Make an itemised list of all the goods that have been left at the property, photos may also be taken. One way to determine the estimated value of the goods is to have a second hand dealer provide a quote for what they believe the goods are worth.

Once the estimated value is determined you can compare this with the costs associated with removal and storage of the goods.

Determining how much it will cost to store the property

Before commencing the abandoned property process, it is important to ascertain an estimate of how much it will cost. The following costs should be considered:

- packing the property
- removal and storage of the property
- sale of the property.

When calculating the costs, remember that these need to be actual losses incurred. If the landlord chooses to store the goods in their own vacant shed, then there is no actual cost associated with this. Similarly, the cost of professional removal would be an acceptable cost but if the landlord chooses to do the removal themselves, the time spent can only be claimed at an hourly labour rate of \$28.45 plus the cost of trailer hire (unless the landlord owns the trailer).

Abandoned property that is not claimed

If the goods are not reclaimed by the tenant within the 28 day period the landlord/agent may sell or otherwise lawfully dispose of the property as if the landlord were the owner of the property. The landlord may then retain the reasonable costs incurred as a result of the property being left on the premises and any amount owed to the landlord under the residential tenancy agreement. The balance (if any) must be paid to the tenant, or if their whereabouts are unknown, to the Commissioner, Consumer and Business Services to be held in the Residential Tenancies Fund until it is claimed by the tenant.

Disputes

If there is a dispute between the landlord/agent and tenant about how abandoned property has been dealt with, SACAT may, on application by either party, make orders resolving the matters in dispute.

Abandoned personal documents

If personal documents are left on the property by the tenant, the landlord/agent must, as soon as possible make reasonable attempts to notify the tenant that the documents have been found on the premises. The landlord/agent must take reasonable steps to keep the documents safe for at least 28 days after regaining possession of the premises.

If personal documents are not reclaimed by the tenant within this 28 day period the landlord/agent may destroy or dispose of the documents. Disposal of personal documents is subject to any Act relating to the preservation of records.

Dealing with animals

Animals are not 'abandoned property'.

Where pets or livestock are left on the property and not claimed by the tenant, it is suggested that the landlord retain the animals on the property while they can be cared for and contact the RSPCA or the Animal Welfare League for assistance.

For further information contact Consumer and Business services on 131 882, or visit www.sa.gov.au/tenancy/renters