

Right of entry

A landlord or agent should only enter rented premises under the conditions set out in Section 72 of the *Residential Tenancies Act 1995* (the Act).

In most cases, a tenant must be given notice in writing before a landlord/agent attends the property. A tenant who has concerns about the entry should contact the landlord/agent immediately to discuss the matter. Where possible, it is best to negotiate a time that is mutually convenient.

Usually, if the landlord/agent has given the correct notice the tenant is required to allow entry and if the tenant is not home, the landlord/agent would have the right to enter by using their own key. However, if the tenant indicates that he or she wants to be present at the time of certain entries the landlord/agent may not enter the premises unless a reasonable effort was made for the visit to occur at a time when it is convenient for the tenant (having regard to the work and other commitments of both the tenant and the persons entering the premises).

If entry is required to be made within 'normal hours' this means hours between 8am and 8pm any day other than Sunday or a public holiday.

When can a landlord/agent enter a rented property?

Section 72 gives clear direction regarding a landlord/agents right to enter a rented property:

- In an emergency;
- At a time previously arranged with the tenant, but not more than once every week to collect rent (provided a reasonable method of paying rent not involving attendance at the premises has been offered, but not accepted by the tenant);
- To inspect the premises, but not more frequently than once every 4 weeks, by giving **written** notice of no less than 7 and no more than 14 days before entering the premises. The maximum period which can be specified on the notice for the proposed entry is 2 hours. A 2 hour period does not apply if the premises are in a remote location or it is necessary for the landlord or agent to be accompanied by a person at the inspection;
- To carry out garden maintenance, but only at a time previously arranged with the tenant no more than 7 days before the day of entry; or by giving **written** notice no less than 7 and no more than 14 days before entering the premises; or at the request of the tenant;
- To carry out necessary maintenance or repairs but only at the request of the tenant or after giving at least 48 hours notice;
- to show the premises to prospective tenants at the request of the tenant or after giving reasonable notice to the tenant during the last 28 days of a tenancy;
- To show the premises to prospective purchasers on not more than 2 occasions in any 7 day period after giving reasonable notice, or at a time previously arranged with the tenant;
- To determine whether a breach has been remedied after having given notice to the tenant of a breach under section 80 of the Act. The tenant must be given no less than 7 and no more than 14 days notice of the entry on a form 1A **prescribed form**;
- For some other genuine purpose with the consent of the tenant or after giving **written** notice no less than 7 no more than 14 days before entering;
- If the landlord believes on reasonable grounds that the tenant has abandoned the premises.

Can a tenant refuse entry?

Provided the correct notice for entry has been given by the landlord, a failure by a tenant to allow the landlord/agent entry may be a breach of the agreement. A verbal refusal from a tenant is not necessarily a breach of the agreement. For a tenant to be in breach, they would need to refuse entry to the landlord/agent when they come to the property.

If a tenant physically bars entry then the landlord/agent must leave immediately. The landlord/agent should then serve a breach notice on the tenant asking them to provide entry or vacate the property. Another notice for entry must be given to the tenant and if the tenant doesn't allow entry the landlord could apply to the South Australian Civil and Administrative

Tribunal (SACAT) seeking an order for access. SACAT will hear the matter and determine if access is to be granted.

Emergencies

A landlord/agent can enter the property in the case of an emergency without first giving notice. Generally, only immediate danger to the property or to a person in the vicinity would be considered an emergency. Before entering, a landlord or agent would need to be satisfied that entry to the premises will not constitute an unlawful entry. If there is any doubt, seek advice from Consumer and Business Services on 131 882.

Written notice

It is always advisable to keep a copy of a written notice and in cases where there has previously been a problem with the tenant receiving notification and there may be a dispute, it would also be advisable to keep a record of how the notice was served.

A landlord/agent does not have any other right of entry to rented premises other than those stated in section 72.

Any landlord/agent who interferes with the reasonable peace, comfort or privacy of a tenant, is in breach of the residential tenancy agreement. If the circumstances amount to harassment of the tenant, the landlord may be guilty of an offence. If a landlord is in breach of the agreement by interfering with the peace, comfort and privacy of the tenant, the tenant may apply to SACAT seeking an order for quiet enjoyment of the premises, or that the tenancy be terminated and the landlord pay compensation for removal costs or similar expenses.

If a landlord or agent enters rented premises without giving appropriate notice or without the tenant's consent, they would be acting unlawfully and could be removed by the Police.

Wherever possible, it is best for parties to discuss and try to resolve any issues as they arise. Where a landlord or agent thinks the tenant may have an issue with them entering the property, they may wish to take a second person with them as a witness. Similarly, where a tenant may have an issue with the landlord/agent entering the property, they may wish to have a witness present during the entry.

What if the rented property appears to have been abandoned?

A landlord/agent can enter premises using their own key if they believe that the tenant has abandoned the premises (i.e. the tenant and any other occupant have permanently left the property). The landlord/agent can take a second person with them and have a camera handy in the event that damage has occurred. Photographs of tenants' belongings are not allowed unless they have been abandoned. Following arrival at the property the landlord/agent should knock on the door loudly and allow the tenant or any other occupant enough time to answer. If there is no answer they can open the door and yell out to see if anybody responds. If there is no response the landlord/agent should keep assessing and calling out as they move through the property, until they are either satisfied that the property has been abandoned, or they come across the tenant or any other occupant. If the landlord/agent comes across an occupant, they should explain why they are there and attempt to resolve the issue. 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.

Is there a form to give notice of entry?

Yes, a 'notice to enter premises' can be used. There is no legal requirement for notice to be given on this form. Where there is a requirement to give written notice, any notice in writing will suffice, provided it includes all the details outlined in section 72. However, there is a requirement to give a notice to enter after serving a breach notice under section 80 on a Form 1A. All forms are available from www.sa.gov.au/tenancy/privaterentalforms

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