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| Public housing leased properties operational guidelines  Effective date: January 2020 Version 1.0 |
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## Revision history

| Version | Amended section | Effective | Details |
| --- | --- | --- | --- |
| 1.0 |  | January 2020 | Date of issue into operational guidelines format |

*Note: this operational guideline supersedes Tenancy Management Manual Chapter 4 – Leased properties*

To receive this publication in an accessible format contact [Housing Practice and Complex Support](mailto:housing.practicesupport@dhhs.vic.gov.au) <housing.practicesupport@dhhs.vic.gov.au>

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When do these operational guidelines apply?

At times, the department will lease privately owned properties to supplement Director of Housing owned stock where waiting list demand is high and options are limited in the area.

This operational guideline applies when managing the allocation of tenancies to property leased from a real estate agent or a private landlord (agent or landlord) to supplement Director of Housing owned public housing stock.

## Human rights considerations

In deciding what action to take, staff will consider the potential impact of proposed action taken through these operational guidelines on the person’s (and their household’s) rights under the Charter of Human Rights and Responsibilities 2006.

Any person taking action in line with these operational guidelines must:

* understand the objective and rationale of the actions they are taking under these operational guidelines
* consider the impact of proposed action on the person’s Charter rights
* consider whether the proposed impact is balanced and proportionate and necessary to achieve that objective, and
* choose the least restrictive measures available.

[The Charter of Human Rights and Responsibilities](http://www.humanrightscommission.vic.gov.au) – A guide for Victorian Public Sector Workers is available at [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au).

# Areas of responsibility

A social housing applicant allocated a privately leased property retains the same tenure rights as applicants housed into Director of Housing owned stock.

Where the lease is not renewed the department re-houses tenants into alternative accommodation, in accordance with the department’s relocation policy, which is either leased or Director of Housing owned.

Departmental tenancies in properties leased through the private market are managed the same way as tenancies in Director of Housing owned properties.

The areas of responsibility for the management of the public housing leasing are as follows:

* the department’s Property and Assets Services (PAS) is responsible for negotiating the lease with the agent or landlord on behalf of the Director
* the PAS Lease Management Officer (LMO) is responsible for the liaison between the department’s local office and the agent or landlord
* PAS is responsible for assessing suitability of the property including undertaking the initial technical inspection
* the department’s finance services is responsible for the management of ongoing lease payments and adjustments thereof
* the local office is required to allocate the property according to pre-determined target
* the local office is required to manage the tenancy with the occupier of the leased property
* the local office is required undertake end of lease vacated works

## Property handover

The LMO is required to forward to the local office a copy of the property condition report together with a copy of the executed lease.

The extent of pre-tenancy maintenance works is determined by PAS in conjunction with the LMO, and the keys are handed over to the local office together with a write-up of required works.

The local office is responsible for raising the works order that engages the head contractor to undertake the required works in accordance with PAS write-up.

Without prior endorsement from the LMO, no additional works are to be done.

The LMO is advised once the property is vacant tenantable.

# Lease of properties

Property and Assets Services branch will aim to negotiate the longest lease possible with an agent or landlord in accordance with the Residential Tenancies Act 1997 (the Act).

The department aims to renew leases where the property meets the ongoing requirement and maintenance standard of the department.

The LMO manages the lease renewal negotiations with the agent or landlord on behalf of the Director.

The LMO commences the lease renewal negotiations approximately six months prior to the expiration of the lease.

Where possible, the department will attempt to conclude lease renewal negotiations prior to the mandatory notice period required by local offices.

Where this is not possible, local offices are advised at the earliest possible time of lease renewal negotiation outcomes.

## Offers of leased property

Offers of housing are made to the target group that the leased property was acquired for.

The department should inform the applicant that it is a leased property, and that they retain the same tenure rights as applicants offered the Director owned stock.

Department staff should advise the applicant that they may be required to relocate to another social housing property, if the lease with the private owner is not renewed or extended.

Applicants who require major or full modifications are generally not housed into leased properties as such works sometimes cannot be undertaken in this type of accommodation.

Each case is considered on its merits in light of the extent of modifications required, costs and waiting list considerations. (Note: the property owner must approve all works before proceeding.)

A refusal of offer because the property is a leased property, is counted as a refusal of a valid offer of accommodation; unless the property is being re-tenanted and has less than six months remaining on the lease.

## Tenure in leased property

A social housing applicant allocated a privately leased property retains the same tenure rights as applicants housed into Director of Housing owned stock.

Tenancies in leased properties are managed the same way as tenancies in the Director of Housing owned properties

The proposed tenant(s) should be advised of the need to complete a leased property acknowledgment form. Where a lease is not to be renewed, the local office is required to initiate the relocation of the household through a Notice to Vacate procedure and in accordance to the department’s relocation manual.

## Lease extension successfully negotiated

Upon the successful negotiation of lease renewal, the LMO will email the relevant VPS5 Manager or equivalent to advise of the new lease expiry date.

The Housing Services Officer (HSO) should send a letter to the tenant(s) advising that the lease has been extended and informing them of the new lease expiry date. A copy of the letter should be placed on the tenancy and property file.

## Lease extension unsuccessfully negotiated

In the instance where a lease cannot or will not be renewed and is due to expire, the LMO should notify the relevant VPS5 Manager or equivalent via email.

The local office should contact the tenant immediately to arrange an interview to discuss possible relocation options.

During the interview, staff should:

* request the tenant lodge a social housing application if they have not already done so
* advise them that they may receive a Notice to Vacate by registered post as a formal part of the relocation process

If the Notice to Vacate has expired and the tenant remains in possession of the premises and will not consent to relocation, contact PAS and request that they negotiate with the agent or landlord for additional lease time.

Where additional lease time cannot be negotiated, make application to Victorian Civil and Administrative Tribunal (VCAT) for an Order for Possession.

If all avenues of relocation have been explored and the tenant refuses to relocate to a suitable alternative property, prepare a briefing memorandum from the relevant VPS5 Manager or equivalent, to the Manager Client Support and Housing Services for authorisation to obtain a Warrant of Possession.

## Vacated lease has less than six months to run

If the property has less than six months to run on the current lease, the local office should offer the property to the next suitable applicant on the waiting list.

The local office should advise the applicant at the time of offer that the property is a leased property with less than six months remaining on the lease, and that the offer will not be counted as a valid offer if refused.

If the offer is refused, the local office should offer the property to the next suitable applicant on the waiting list.

If the property becomes hard to let, in that applicants have repeatedly refused it, refer the property in HiiP to asset management using the referral reason – ‘refer property back to lease team’ with recommendation ‘return property back to leased management’ and select action ‘RLM raised’.

Staff should ensure that a file note is added in HiiP to indicate that the leased property is near expiration date and cannot be allocated.

Local office staff should then discuss with the relevant VPS5 Manager or equivalent to determine if there is an alternative use for the property.

If the office cannot utilise the property, contact PAS to determine whether:

* the property can be returned to the agent or landlord early
* the lease can be renewed, or
* another program can utilise the property for the remainder of the lease

## Early lease cessation

If the LMO informs the local office that a VCAT order was granted for the early cessation of a lease, the local office will have to relocate the tenant on an urgent basis.

Should this occur, local office should immediately contact the tenant to discuss the VCAT order.

Staff should advise the tenant that the department will assist to relocate the household as quickly as possible, and inform them of the timeframes.

The relevant VPS5 Manager or equivalent should then be contacted to be advised of the circumstance.

The local office should seek assistance of other local offices to co-ordinate an urgent relocation within the region, or to another region.

# Access to property by agent or landlord

The agent or landlord has the right to inspect leased properties as per s86 of the Residential Tenancies Act (1997).

The inspection is arranged and attended by local office staff.

The agent or landlord is required to provide a Notice of Entry to the LMO.

The agent or landlord is requested to provide a fourteen days’ Notice of Entry to enable adequate time to notify the tenant.

An initial inspection by the agent or landlord may be conducted three months after the first leased commencement date.

Other access to property could be for:

* a six monthly inspection
* where the premises is to be sold or used as a security for a loan
* where entry is required for valuation purposes
* where the agent or landlord undertaking repairs to the property
* where the agent or landlord believes the tenant has failed to comply with their ‘duties’ under the Act or the tenancy agreement.

Where a tenant refuses access, a breach of duty notice is issued by the local office, allowing the tenant a period of three days to comply with the entry requirements.

The agent or landlord is encouraged to inspect properties during vacant periods.

The local offices are required to notify the LMO as soon as a property becomes vacant to facilitate this inspection process.

# Dispute management and resolution

## Dispute from agent or landlord

If the agent or landlord contacts the local office with concerns about the lease agreement with the Director, or any other contractual matter, advise them to contact the LMO directly on telephone (03) 9096 8414

## Complaints about a departmental tenant

If a complaint is received from the agent or landlord about the department tenant residing in a leased property, advise them to contact the LMO directly to report the complaint.

Where a complaint is received by the LMO, the complaint is referred to the relevant VPS5 Manager or equivalent for follow up.

The relevant VPS5 Manager or equivalent may refer the complaint to an HSO for follow up if appropriate.

In this instance, the HSO should investigate the complaint in accordance with departmental practices, and take appropriate action to remedy the situation.

A record of all contact and outcomes with the tenant, agent or landlord should be recorded in HiiP and the LMO informed of action taken.

# Responsive maintenance and capital works

During the course of the tenancy, maintenance to the property may be required.

The department determines responsibility for maintenance works based on the type and urgency of the works required.

Tenants’ requests for maintenance works are reported directly to the maintenance call centre or local office. The maintenance call centre or local office determines the works that will be done at departmental expense.

All other works are referred to the LMO for follow-up with the agent or landlord.

Capital works is maintenance that adds life to the property such as replacement of hot water services, replacement of cooking appliances, replacement of boundary fences, internal painting, etc.

The agent or landlord should complete capital work’s requests except in urgent need.

## Capital works requests

If the works are capital in nature and the tenant has reported the fault during normal business hours Monday to Thursday, a department HSO or Housing Customer Services Officer (HCSO) should raise an urgent inspect and report schedule of contract (SC) order to the head contractor.

The inspect and report should then be forwarded to the LMO to facilitate liaison with the agent or landlord and repairs to be completed.

The HSO should contact the tenant and advise them that the matter has been referred to the owner via LMO to rectify the problem as soon as possible.

If the works are capital in nature, and the tenant reports the fault on a Friday or a day prior to a public holiday, raise a SC order to the head contractor to undertake the required repairs.

Request the tenant to make contact if the fault is not repaired within 12 hours.

## If the agent or landlord does not undertake the repairs

If the tenant makes contact with the department and advises that the fault has not been repaired, telephone the LMO on (03) 9096 8414 and request authorisation to direct the head contractor to carry out the repairs.

Once authorised, raise an urgent SC order to the head contractor for the required works, give the details of the SC order to the LMO so they can recover the cost of repairs from the agent or landlord.

## Agent or landlord identified tenant responsibility works

The LMO will advise the local office via email when an agent or landlord makes contact to request that tenant responsibility works is rectified.

The local office should then contact the tenant to advise them that a complaint has been received from the agent or landlord, and arrange a time to inspect the property.

If the tenant does not consent to an inspection, the local office should advise them that they will be served with a Notice to Entry the premises.

An inspection of the property for damage as reported to the LMO by the agent or landlord should be arranged by the local office.

Should the damage be established as tenant related, the local office should inform the tenant that they will be charged for the cost of repairs, and arrange the works.

If it cannot be determined that the damage was the fault of the tenant, the local office should advise the tenant that the repairs will be undertaken at the department’s expense.

The local office should then advise the LMO of the investigation outcome and action taken within seven days.

## Maintenance between tenancies

When a tenant vacates a leased property the local office should arrange standard maintenance works to bring the property up to a tenantable standard.

The extent of required works should be determined with reference to the property condition report.

Only arrange works that bring the property to the pre-tenancy standard.

## Lease cessation responsibilities

Where negotiations between the LMO and the agent or landlord do not result in renewal of a lease, the property is returned to the agent or landlord.

Local offices are required to undertake basic cleaning, rubbish removal, MCAT and garden maintenance works prior to referring the property to the LMO for final maintenance assessment and disposal.

Once the minor maintenance works are completed, the keys are returned to the LMO together with the property file.

The LMO arranges final maintenance works through PAS branch to bring the property to a condition comparable to when it was initially leased by the Director of Housing.

The LMO manages the final negotiation and lease cessation process on behalf of the Director of Housing, including the deactivation of the property in HiiP.

The local office is required to advise the LMO of any pending legal action to recover outstanding MCATs.