



Chapter 34 | PME Manual Extract | 34.1 Disaster Management Best Practice Guide

The following steps are best practice suggestions for licensees and property managers who face flood disasters (or other natural disasters). *Consider making an email account that all emails can be forwarded to (such as floods2015youragency@gmail.com or send to one existing accounts).*

- Start a separate disaster management journal (such as January floods 2015) for entry of all reported damage and incidents of properties managed. This could be kept either electronically or in a paper based manner; as long as it is easily accessible by all staff. Also, ensure appropriate diary notes and paperwork are placed in computer software and the property file. Draw up six columns to record the following;
 - Date
 - Property
 - Damage reported and by whom
 - Insurance policy number (once advised by lessor)
 - Action taken
 - Task completed (once all works are finalised)
 - An example template for use hard copy or electronic is available at member online folder 34.
- Alternatively, ensure two copies are made of any maintenance forms; one to be centralised in one file for follow up and management over coming weeks and months.
- Direct staff who are taking phone calls from tenants and any notification of damage that the incident is to be recorded in the disaster management journal.
- Prioritise the damage to property and tenant situation and work on the highest priority first and make your way through the list.
- Contact lessors of known property damage and advise of the situation. (further information is below on procedures). Where possible, send a generic email to all clients advising of the situation and request communication to be in writing.
- Contact tenants of suspected flood damaged property and the tenants of property who have reported damage. Provide the tenant with the RTA Fact sheet on Natural Disasters. If the property is completely uninhabitable, advise the tenant that the tenancy most likely will lawfully end. Advise that discussions will be needed with the lessor prior and more information will be provided. If the property is not completely unlivable and has only sustained 'minor' flood damage, advise the tenant that the lessor will be contacted to discuss the matter further.
- In regards to the tenant's own property being damaged, advise the tenant to contact their personal contents insurance company. Regrettably some tenants will not have their own personal insurance; in this event, advise tenants that the lessor will be advised and all attempts will be made to ascertain if the lessor's insurance will cover the situation. In most cases, the lessor's insurance will not cover the tenants belongings.



- There is no legislative duty for lessors to provide tenants with alternative accommodation in times of natural disasters; however, this may be recommended in some cases as a sign of good faith however many lessors may not be in a situation to afford this option. Lessors may wish to contact their insurance companies to identify if there is any coverage for this situation.
- The RTRA Act allows for tenancies to either end (if completely unliveable) or rent decreases to be negotiated, in circumstances of partial non liveability.
- Contact lessors accordingly and advise the current status of their property and that more information will be provided where required and when obtained. Provide lessors with the RTA Fact Sheet on Natural Disasters available from the RTA website (also available at member online folder 34 – RTA Fact sheets). If the property is not liveable, advise the lessor that the RTRA Act allows for the tenancy to end on the same day. If the property is partially unfit to live in and/or has suffered minor damage, advise the lessor of the provisions of the RTRA Act which allow for a negotiated rent decrease during the period of repair. (see section below)
- Advise lessors to contact their insurance companies (contents, building and landlord insurance) to report the incident and to start the process of making a claim. Advise lessors to start the claim paperwork process.
- Advise lessors to provide the following information in writing to your agency
 - ✓ the insurer, contact phone details (email and phone number) and name of contact (if possible)
 - ✓ the insurance policy number;
 - ✓ the claim number and
 - ✓ the insurance paperwork (mostly completed) for finalisation once required works are carried out.
- Explain to lessors that due to the large volume of properties and people affected, all communication to be in writing in regards to this matter.
- Contact the agency preferred tradespeople/contractors in regards to high priority jobs and allocate work. Follow up the contact with a written work order. In high to medium damage property (or if any doubt), contact the insurer for advice *before* proceeding.
- Assess progress of high priority work daily until tasks completed. Keep in regular communication with lessors and tenants as to progress and for great customer service. Ensure the disaster management journal is maintained.
- Once the majority of the works are considerably under control, arrange for routine inspections to check on properties that have had minor damage. Ensure photos are taken, extensive visual reports are provided to lessors and take action as appropriate (such as advising lessors to make insurance claims for particular cases)
- Following are the relevant sections from the RTRA Act for rent decreases and ending the tenancy due to non liveability (agreement frustrated). The relevant provisions are highlighted via shading below. Ensure the RTA Form 12 Notice to Leave is completed to end the tenancy lawfully and that any rent decrease agreements are completed in writing. Tenants can also issue a RTA Form 13 to end the tenancy. Obtain lessors written instructions and provide an agreement with the tenant in which they should sign. The agreement should allow for how much the rent will decrease by, and for how long. Also ensure is made in the agreement for when the rent is to go back to the original agreement amount.



- If agreement cannot be reached for the rent decrease amount, complete the RTA Form 16 Dispute Resolution and seek mediation assistance. If dispute resolution is not successful, the matter may need to be referred to Tribunal as a non urgent application (within 7 days of the unsuccessful dispute resolution number being provided by the RTA).
- Ensure all verbal conversations with tenants, lessors and other third parties are recorded in office files; either hard copy file notes or electronic file notes.
- If your agency is at risk, ensure all files are safe and easily accessible (such as back ups of site and retrievably remotely).

Queensland Legislation – *Residential Tenancies and Rooming Accommodation Act 2008*

94 Rent decreases

(1) This section applies if the premises—

- (a) are destroyed, or made completely or partly unfit to live in, in a way that does not result from a breach of the agreement; or
- (b) no longer may be used lawfully as a residence; or (c) are appropriated or acquired compulsorily by an authority.

(2) This section also applies if—

- (a) services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than because the tenant failed to meet the tenant’s obligations under the agreement; or
- (b) the amenity or standard of the premises decreases substantially other than because of malicious damage caused by the tenant.

(3) The rent payable under the agreement decreases accordingly or, if an order for a decrease in the rent is made by a tribunal, to the extent stated in the order.

(4) A tribunal may make an order for a rent decrease only if—

- (a) the tenant applies to the tribunal for the order; and
- (b) if this section applies because of subsection (1)—the premises are partly unfit to live in.



329 Handover day for notice to leave for premises that are not moveable dwelling premises

- (1) This section applies only to notices to leave given for premises that are not moveable dwelling premises.
- (2) The handover day for a notice to leave given by the lessor must not be earlier than—
- (a) if the notice is given because of an unremedied breach and the breach is a failure to pay rent—7 days after the notice is given; or
 - (b) if the notice is given because of an unremedied breach and the notice is not a notice to which paragraph (a) applies—14 days after the notice is given; or
 - (c) if the notice is given because of noncompliance (tribunal order)—7 days after the notice is given; or
 - (d) if the notice is given because of non-livability—the day the notice is given; or
 - (e) if the notice is given because of compulsory acquisition—2 months after the notice is given; or
 - (f) if the notice is given because of a sale contract—4 weeks after the notice is given; or
 - (g) if the notice is given because of ending of entitlement under employment—4 weeks after the notice is given; or
 - (h) if the notice is given because of ending of accommodation assistance—4 weeks after the notice is given; or
 - (i) if the notice is given because of ending of housing assistance—2 months after the notice is given; or
 - (j) if the notice is given without ground for a periodic agreement—2 months after the notice is given; or
 - (k) if the notice is given without ground for a fixed term agreement—the later of—
 - (i) 2 months after the notice is given; or
 - (ii) the day the term of the agreement ends.
- (3) Nothing prevents a notice to leave under subsection (2)(k) being given at any time before the end of the term of the fixed term agreement.

284 Notice to leave if agreement frustrated

- (1) The lessor may give a notice to leave the premises to the tenant because the premises—
- (a) have been destroyed, or made completely or partly unfit to live in, other than because of a breach of the agreement; or
 - (b) no longer may be used lawfully as a residence; or
 - (c) have been appropriated or acquired compulsorily by an authority.
- (2) A notice to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) A notice to leave under subsection (1)(a) or (b) is called a notice to leave for **non-livability**.

Editor's note—

See sections 329(2)(d) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(d) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of non-livability.

- (4) A notice to leave under subsection (1)(c) is called a notice to leave for **compulsory acquisition**.

Editor's note—

See sections 329(2)(e) (Handover day for notice to leave for premises that are not moveable dwelling premises) and 330(2)(e) (Handover day for notice to leave for moveable dwelling premises) for requirements about the handover day for a notice to leave given because of compulsory acquisition.

305 Notice of intention to leave if agreement frustrated

- (1) The tenant may give a notice of intention to leave the premises to the lessor because the premises—
- (a) have been destroyed, or made completely or partially unfit to live in, other than because of a breach of the agreement; or
 - (b) no longer may be used lawfully as a residence; or
 - (c) have been appropriated or acquired compulsorily by an authority.
- (2) A notice of intention to leave under this section must be given within 1 month after the happening of the event mentioned in subsection (1).
- (3) A notice of intention to leave under subsection (1)(a) or (b) is called a notice of intention to leave for **non-livability**.
- (4) A notice of intention to leave under subsection (1)(c) is called a notice of intention to leave for **compulsory acquisition**.



In the QCAT case *Brandenburg v Pollock* [2011] QCAT 604, chapter 17, the tribunal provides some direction in relation to ‘frustrated’ agreements as set out below;

The term ‘frustration’ has a specific legal meaning and is explained in the Butterworths Concise Australian Legal Dictionary as being “[t]he situation where a contractual obligation has, without default of either party, become incapable of being performed.” For example an intervening act has to occur – such as a flood, cyclone or fire – causing damage to a property and it has destroyed or made it completely or partially unfit to live.

Natural disasters sourced from www.rta.qld.gov.au

A tenancy agreement does not automatically end during a natural disaster, even if the property is totally destroyed.

A tenancy agreement will only end if one of the following happens:

- the tenant and lessor/agent agree in writing
- the tenant gives the lessor/agent a [Notice of intention to leave \(Form 13\)](#) (or [Form R13](#) for rooming accommodation) or the lessor/agent gives the tenant a [Notice to leave \(Form 12\)](#) (or [Form R12](#) for rooming accommodation)
- the lessor/agent gives the tenant an [Abandonment termination notice \(Form 15\)](#)
- the [Tribunal](#) makes an order

If either party disagrees with the notice, they can dispute it by lodging a [Dispute resolution request \(form 16\)](#) with the RTA.

After a natural disaster:

- A premises may be declared unliveable if it is unsafe to live in for health and safety reasons, or if the premises cannot be occupied. Giving notice will end the tenancy agreement from the day the notice is lodged, but must be done within one month of the disaster. See [If the premises becomes unliveable](#) for more information.
- The tenant may be evacuated; however, they must still pay the rent. It may be possible to negotiate a rent reduction for this period but it must be discussed on a case-by-case basis.
- The rent may be reduced if the property is damaged or if some of the facilities are unavailable (e.g. carpark, pool, laundry). This is also on a case-by-case basis and needs to be agreed between the tenant and lessor/agent/manager and put in writing.
- You may need [emergency repairs](#) on the property.



Fast facts

- Following a natural disaster the rental market can become competitive but the rent cannot be increased outside of the normal rules for [rent increases](#).
- A tenant cannot be evicted for one who will pay a higher rent outside of the normal rules for [ending a tenancy](#).
- The lessor is responsible for maintaining the premises in good repair, but will need to comply with Entry notice requirements when repairs are being done.
- Bond processing with the RTA could be affected if postal services in Brisbane or in the affected area are disrupted. [Contact the RTA](#) for information on extended processing times.

Flood affected properties

A tenancy agreement does not automatically end as a result of flooding, even if the premises are totally destroyed. However, it can be ended quickly if the correct notice is given. Until it is ended, the tenant is still responsible for paying rent.

If the property is unliveable the tenancy can be ended on the day the notice is given.

If a property is damaged, the lessor and the tenant can come to an agreement to reduce the rent until the premises are returned to the condition prior to the disaster. The agreement should be put in writing and signed by all parties. If an agreement can't be reached then the RTA's free [dispute resolution service](#) may be able to assist. Under the Act, tenants may ask for a rent reduction if:

- the premises are partly unfit to live in
- if services, facilities or goods to be provided to the tenant are no longer available
- if the amenity or standard of the premises decreases substantially, so long as the damage was not caused by the tenant.

Cleaning - who's responsible?

The lessor is responsible for the maintenance and repairs needed to bring the property back to a liveable condition, as well as fences, gardens and pools. These repairs need to comply with health and safety laws. The tenant is responsible for removing or cleaning their possessions. Lessors and tenants are encouraged to communicate with each other about the clean-up.

RTA Fact sheet

Important renting information for natural disaster victims

As a tenant or lessor/agent it is vital to know what your renting rights and responsibilities are if you have been affected by a natural disaster, such as a tropical cyclone. This fact sheet provides important details about what tenants and lessors/agents can and cannot do under the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) if the rental property is damaged or non-liveable.



How can the tenant or lessor/agent end the tenancy agreement?

The Act only allows a tenancy agreement to be ended in the following ways:

- the lessor/agent and tenant both agree, in writing, for the agreement to end
- the lessor/agent gives the tenant a *Notice to leave* (Form 12) or *Abandonment termination notice* (Form 15) to the tenant
- the tenant gives the lessor/agent a *Notice of intention to leave* (Form 13)
- the tenant is given a *Notice to vacate from mortgagee to tenant/s* (Form 19) from a mortgagee (e.g. a bank) who is entitled to take possession of the premises
- the sole tenant has died and the tenancy must be ended, or
- the Tribunal makes an order.

Does the tenancy agreement end if the property has become non-liveable?

A tenancy agreement does not automatically end where the premises are rendered non-liveable. If the premises becomes non-liveable, either the lessor/agent or the tenant can issue the other party with a *Notice to leave* or *Notice of intention to leave* on the grounds of non-liveability, but must do so within one month of the event that made the premises non-liveable.

What is a non-liveable property?

Non-liveability is determined where the premises:

- has been destroyed, or made completely or partly unfit to live in, other than because of a breach of the agreement, or
- may no longer be used lawfully as a residence.

The agreement ends the day the notice is given.

What if the tenant doesn't think the property is non-liveable and wants to stay?

If the tenant believes the premises is still liveable and wants to stay but has been given a *Notice to leave* by the lessor/agent, they can dispute the grounds by lodging a *Dispute resolution request* (Form 16) with the RTA as soon as possible.

What can a lessor/agent do if the property is non-liveable but the tenant doesn't want to leave?

If the tenant doesn't leave the premises, the lessor/agent can apply to the Tribunal for an order because of a failure to leave under the grounds of non-liveability. The lessor/agent may need to provide evidence to the Tribunal to support the grounds of the application.

What are the lessor's obligations if the property has been damaged?

The lessor has an obligation to maintain the premises so that they are fit to live in, are in good repair and comply with any law about health and safety. Lessors may need to negotiate entry to the premises for the repairs to be done. Entry can be at any time by mutual agreement, or by serving an *Entry notice* (Form 9), giving appropriate notice.



Can tenants get a rent reduction if the property is damaged and the tenants stay?

In some cases, tenants can negotiate a rent reduction if the premises have been affected. This can be achieved through negotiation between the lessor/agent and tenant, or with the assistance of the RTA's dispute resolution service. If necessary, the tenant can apply to the Tribunal for a rent reduction.

The rent decrease provisions apply if the premises:

- are destroyed, or made completely or partly unfit to live in, in a way that does not result from a breach of the agreement, or
- no longer may be used lawfully as a residence, or
- services, facilities or goods to be provided to the tenant under the agreement are no longer available or are withdrawn other than because the tenant failed to meet the tenant's obligations under the agreement, or
- the amenity or standard of the premises decreases substantially, other than because of damage caused by the tenant.

The amount of the rent decrease can be negotiated between the parties, or the Tribunal can order the amount of rent decrease. The Tribunal can only make an order for a rent decrease if the tenant applies for the order on the grounds the premises are partly unfit to live in.

What if a tenant wants to vacate the premises while they are non-liveable, but return after the premises have been repaired?

There may be situations where the tenant wants to return to the premises after the property has been repaired, but wants obligations for rent to be waived during this period. The tenant can negotiate these arrangements with the lessor/agent directly, or with the assistance of the RTA's dispute resolution service if an agreement cannot be reached.

Both parties can also decide to formally end the agreement and re-sign a new agreement after the repairs are complete. However, increased rent can be included in a new agreement.

Can a tenant be evicted to make way for a new tenant who will pay higher rent?

It is an offence, with heavy penalties, to evict a tenant in a way that does not comply with the Act. If there is a breach of the agreement, the tenant must be given an opportunity to remedy the breach. The Act sets out processes which must be followed when asking a tenant to leave. If there has not been a breach, the lessor/agent must give two months' notice to end the tenancy without grounds, but cannot end a fixed term agreement before the end date specified in the agreement.



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