# Summary of proofs for possession applications

# For Part 4A Parks by Site Owner / Mortgagee

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| HEARING DETAILS |
| **VCAT number: R2021/**  **Date of hearing:**       /       /  **Site Owner (Owner):**    **Agent (representing Owner at hearing):**  **Site Tenant (Tenant):** |
| DETAILS OF SITE AGREEMENT |
| **Address of site:**    **Date agreement commenced:**       /       / |
| SUMMARY OF APPLICATION |
| **When is the date of your VCAT application?**       /       /  **When did you send the application to the tenant/s?**       /       /  **How did you send it?**  Electronically  Registered post  Ordinary post  By hand  **Address/es sent to:**    **Evidence of sending the application to the tenant/s is attached on pages**       **to**      . |
| DETAILS OF NOTICE TO VACATE |
| **Grounds for the NTV:** Section        Ground                        (eg Repairs)  **What is the termination date in your NTV?**       /       /  **When did you send the NTV to the tenant/s?**       /       /  **How did you send it?**  Electronically  Registered post  Personally (By Hand)  **Address/es sent to:**      **Evidence of sending the application to the tenant is attached on pages**       **to**       . |

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| DETAILS OF APPLICATION |
| **What is the ground/s for seeking a possession order (briefly set out the facts which give rise to**  **the ground)?**      **What date for possession are you requesting?**       /       /  **Is the date you are requesting reasonable and proportionate, and if so, why is it reasonable and proportionate?**                                                                            **Do you have all the documents relevant to the application (see following pages detailing evidence)?**  Yes, attach copy  No |
| DECLARATION |
| **This form is declared to be correct and submitted to VCAT on**       /       /  **By name of person appearing at hearing:**  Owner  Agent  **Signature of person appearing at hearing:** |

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| EVIDENCE AND DOCUMENTS REQUIRED FOR HEARING |
| You must attach, at least, the following documents:   * A copy of the Notice to Vacate and proof of service, * A copy of the Application and proof of service, and * A copy of any document, photograph or video that you rely on to support the grounds for giving the Notice to Vacate.   All evidence must be labelled with sequential page numbers with a cover sheet identifying the documents that follow. 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 park.  This summary of proofs and attached evidence should be sent to VCAT and the tenant/s at least three business days before the hearing and state the Tribunal reference number and date and time of the hearing in the subject line of the email (eg R2021/0001 15 February 2021 @ 2pm). Evidence can be submitted to the Tribunal at [renting@vcat.vic.gov.au](mailto:renting@vcat.vic.gov.au).  For further information on [how documents should be submitted for the hearing](https://www.vcat.vic.gov.au/case-types/residential-tenancies/access-documents-residential-tenancy-case) and [how to prepare for your hearing,](https://www.vcat.vic.gov.au/the-vcat-process/prepare-to-come-to-vcat/prepare-for-the-hearing) refer to the [VCAT website](https://www.vcat.vic.gov.au/the-vcat-process/prepare-to-come-to-vcat/prepare-for-the-hearing). |
| REASONABLE AND PROPORTIONATE |
| For the purposes of determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following—  (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 the 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, 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 site agreement;  (g) the effect of the conduct of the tenant on others;  (h) whether any other order or course of action is reasonably available instead of making a possession order;  (i) as the case requires, the behaviour of the owner,  (j) any other matter the Tribunal considers relevant. |

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| GROUNDS FOR POSSESSION AND EVIDENCE FOR THE HEARING |
| **Tick the relevant ground in the Notice to Vacate that supports your Application and detail the evidence provided.**  **Remove pages for any grounds that don’t apply.** |
| **s.207W: Damage (Immediate NTV)**  The site tenant or the tenant’s visitor, whether by act or omission, has intentionally or recklessly caused serious damage to the site, or the park, including any common areas, or any facility in the park, including any safety equipment.  **Are before and after photos of the damage attached?**  Yes,attached on pages        to         No  **Is there video of the alleged event/s?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **If the act was caused by a person other than the tenant, should an order be made that the tenant must not permit entry by that person to the site?**  Yes  No  **Why/why not?**                                                               **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**      **Can, and should, the Tribunal make a compliance order?**  Yes  No  **If so, why?**                                                                 **Are there any special requirements of the tenant to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date?**  Yes  No  Don’t know  **If known, what are those special requirements?** |

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| **s.207X: Danger: (Immediate NTV)** (**Note** the definition of “*endanger*” in the Director’s Guidelines)  The tenant, or the tenant’s visitor, by act or omission, endangers the safety of  (a) any person or property in the Part4A park; or  (b) the site owner or the owner’s agent; or  (c) a contractor or employee of a person referred to in paragraph (b).  **Are photos attached?**  Yes,attached on pages        to         No  **Is there video of the alleged event/s?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’ – why?**      **If the act was caused by a person other than the tenant, should an order be made that the tenant must not permit entry by that person to the site?**  Yes  No  **Why or why not?**                                                          **If so, why?**                                                                **Are there any special requirements of the tenant to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date? (s 333(1B))**  Yes  No  Don’t know  **If known, what are those special requirements?** |

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| **s.207Y: Threats and intimidation: (14 day NTV)**  The tenant, or a person residing at the site, has seriously threatened or intimidated:  (a) the site owner or the owner’s agent; or  (b) a contractor or employee of a person referred to in paragraph (a).  **Are photos/ emails/ text messages attached?**  Yes,attached on pages        to         No  **Is there a video or a voice recording of the alleged event?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**      **Can, and should, the Tribunal make a compliance order?**  Yes  No  **If so, why?**                                                                 **Are there any special requirements of the tenant to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date? (s 333(1B))**  Yes  No  Don’t know  **If known, what are those special requirements?** |

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| **s.207Z: Disruption: (Immediate NTV)**  The site tenant, or the tenant’s visitor has seriously interrupted the quiet and peaceful enjoyment of the Part 4A park by other occupiers.  **Are photos/ emails/ text messages attached?**  Yes,attached on pages        to         No  **Is there a video or a voice recording of the alleged event?**  Yes  No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**                                                            **Witness 2 – Name:**                                                            **What other documentary evidence do you have?**      **This evidence is attached on pages**        to  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**      **If the act was caused by a person other than the tenant, should an order be made under s 332A(3) that the resident must not permit entry by that person to the room?**  Yes  No  **If so, why?** |

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| **s.207ZA: Failure to comply with Tribunal order: (14 day NTV)**  The tenant has failed to comply with an order of the Tribunal made under section 212.  **A copy of the VCAT order dated**       /       /        **is attached on pages**        of     **.**  **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:**  **Witness 2 – Name:**  **What other documentary evidence do you have?**      **This evidence is attached on pages**        to       .  **Was the breach trivial?**  Yes  No  **Why?**    **Has the breach been remedied as far as possible?**  Yes  No  **Why?**    **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.207ZB: Successive breaches by site tenant:** (14 day NTV)  The tenant has breached a duty provision; and on 2 previous occasions the tenant has been in breach of the same provision; and the tenant has been given a breach of duty notice on each of the two prior occasions.  **First breach** A copy of the first breach notice dated       /       /        and proof of service  is attached on pages        of       .  **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/es Name:**                                                            **Did the tenant remedy the breach within the time given in the notice?**  Yes  No  **Second breach** A copy of the second breach notice dated       /       /        and proof of service  is attached on pages        of       .  **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/es Name**  **Did the tenant remedy the breach within the time given in the notice?**  Yes  No  **Third breach**  **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/es Name:**                                                            **What other documentary evidence do you have?**                            **This evidence is attached on pages**        to       .  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?**                             **If the breach was caused by another person other than the tenant, should an order be made under s 332A(3) that the tenant must not permit entry by that person to the site?**   Yes  No  **Why or why not?** |

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| **s.206AY: Use of site for illegal purpose: (14 day NTV)**  The tenant has used the site or permitted its use for a purpose that is illegal at common law or under an Act.  **Are photos attached?**  Yes,attached on pages        to         No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness 1 – Name:**  **Witness 2 – Name:**  **What other documentary evidence do you have?**    **This evidence is attached on pages**        to       .  **Is there police evidence or police charges?**  Yes,attached on pages        to         No  **What common or statutory law has the site tenant not complied with?**    **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |
| **s.207ZD: Assignment or subletting without consent: (14 day NTV)**  The tenant has assigned or sublet, or purported to assign or sublet, the whole or any part of the Part 4A site without the site owner’s consent.  **Are photos attached?**  Yes,attached on pages        to         No  **Is there evidence from witnesses?**  Yes,attached on pages        to         No  **Witness Names:**  **What other documentary evidence do you have?**    **This evidence is attached on pages**        to       .  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.207ZE: Closure of Part 4A park: (365 day NTV)**  The site owner has given written notification to the municipal council of the proposed closure of the Part 4A park, ahead of giving the tenant a notice to vacate the site because the park is to be closed.  **A copy of the written notification to the municipal council is attached on pages**        to       **.**  **What is the reason for the closure of the Part 4A park?**      **Has the site owner applied to the Tribunal for an order determining the compensation to be paid to eligible tenants for the closure of the Part 4A park (s.215A)?**  Yes  No  **If Yes, has an order been made?**  Yes,attached on pages        to        No  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |
| **s.207ZG: Notice under fixed term site agreement: (365 day NTV)**  A site owner, under a fixed term site agreement, has given the site tenant a notice to vacate the site at the end of the fixed term. The termination date in the notice is on or after the date of the end of the fixed term.  **The fixed term ends on**       /       /       , **and the termination date in the notice to vacate is**       /       /       , **being a date that is on or after the end of the fixed term period.**  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |

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| **s.207ZI: Notice by mortgagee: (365 day or 90 day NTV)**  The mortgagee is entitled to possession of, or to exercise a power of sale, in respect of the Part 4A park under a mortgage.  **A copy of the mortgage document entitling the mortgagee to possession is attached on pages**        to       **.**  **Is the mortgage agreement attached?**  Yes,attached on pages        to         No  **The entitlement to possession is at page**        **of the agreement**.  **Is there a court order attached?**  Yes,attached on pages        to         No  **Is it reasonable and proportionate to make a possession order?**  Yes  No  **If ‘reasonable and proportionate’, why?** |