[Date]

[Your name]

[Your address]

[Landlord/agents name]

[Landlord/agents address]

Dear [Landlord/agents name]

## Re: Notice to Vacate regarding [your address]

I am writing in response to your Notice to Vacate dated [date] on the grounds that [insert grounds, e.g. that the landlord wants to move in/sell the property/undertake major repairs].

*[If you are trying to find other accommodation anyway] [Delete if not applicable]*

[Outline steps taken and your progress, and ask whether the landlord would consider extending the date on the Notice to Vacate].

*[If the landlord/agenthas not provided the Notice to Vacate in the required form] [Delete if not applicable]*

Clause 83 of the Standard Residential Tenancy Terms (STRR) states that a Notice to Vacate must:

* be in writing,
* specify the address of the premises, and
* specify the grounds on which the termination notice is issued, together with sufficient information to identify the circumstance giving rise to the grounds in the notice.

The Notice to Vacate must include a valid notice period and state that the landlord requires the tenant to vacate at the end of that notice period.

Your attempt to terminate my tenancy fails to *[Specify which part of Clause 83 has not been met]*

*[If the landlord has not provided the correct grounds or notice period, e.g. they want to sell but are saying they want to live there] [Delete if not applicable]*

I wish to bring to your attention that circumstances surrounding the Notice to Vacate suggest that it is invalid. [*Outline why you think this is, e.g. landlord told you they intend to do major works to the property before they sell it*]. Clause 96(1)(e) of the SRTT states that you are required to give me [*insert correct number from clause 96 depending upon reason for notice*] weeks’ notice if you genuinely intend to [*reason for notice, e.g. reconstruct, renovate or make major repairs to the premises*]. A valid Notice to Vacate on these grounds would require me to vacate the premises on [*insert date*].

*[If the landlord has given you a notice on grounds listed in clause 96(1)(a), (b) or (c)] [Delete if not applicable or you have already been provided with a statutory declaration]l*

If you intend to rely on *[ground]*, you must also provide a statutory declaration of the landlord’s intention or belief, which you have not done. I note a false or misleading statutory declaration carries significant criminal penalties.

*[If you think the Notice to Vacate is based on grounds which are not genuine] [Delete if not applicable]*

Could you please provide us with the following information regarding the landlord’s circumstances so that we are able to satisfy ourselves of the validity of the notice, and therefore minimise the possibility of the matter being referred to the ACT Civil and Administrative Tribunal (ACAT):

*[Possible Examples:]*

* Why is the landlord moving to Canberra? When does he/she need to be in Canberra? When did he/she decide to move? How long is he/she staying for?
* What renovations/repairs is the landlord planning to do on the property? What areas of the house will be unusable and for how long? When did the landlord make the decision to repair/renovate? Has the landlord booked tradespeople? What is the waiting time before the tradespeople can commence work?
* Why has the landlord decided to sell the property at this time? Why does the landlord want to sell with vacant possession, rather than tenanted and collecting rent? What steps has the landlord taken towards selling the property?
* [It may help to mention anything that makes the reason look suspicious] Why has the landlord decided to move to Canberra when she works in Sydney? Why has the landlord decided to sell the property when he previously said he would retire to it?

Please inform us of any other circumstances relevant to the Notice to Vacate. Please keep us updated if the landlord’s circumstances change.

*[If you think the Notice to Vacate is being given because of your attempt to enforce your rights] [Delete if not applicable]*

The reason we are requesting this information is that the circumstances surrounding the notice suggest that it is invalid. In particular, the timing of the notice is [*insert the relevant number of days or weeks*] after [*outline what action you took to enforce your rights or seek legal advice, or what decision the tribunal made in your favour*].

Given these circumstances, under section 57 of the *Residential Tenancies Act 1997* (ACT), the ACAT will not make a termination and possession order unless the landlord can prove that he/she wasn’t motivated by these circumstances.

Please be aware that landlords have been ordered to pay compensation where tenants have vacated in response to invalid/retaliatory notices to vacate.

 *[If you wish you may include the cases below to strengthen your argument] [Delete if not applicable]*

I draw your attention to 2 cases in particular:

*Osuchowski & Scouller v Radojevic* [2008] ACTRTT 13

In that case, the landlord was ordered to pay over $3,800 in compensation for an invalid Notice to Vacate. The landlords had given a Notice to Vacate on the basis that the landlord’s son intended to live on the premises. The landlords then put the property up for rent after the tenants vacated the premises. The tenants argued that the landlord issued the Notice to Vacate in order to obtain ‘market rent’ for the premises of $100 more per week than the tenants were paying. The Tribunal found it more likely than not that the landlord gave the notice for this reason, so found the notice invalid and that the landlord would be liable to pay to the tenants compensation for not acting in good faith.

*Radoll & Bird v Girdler* [2011] ACAT 5

In that case, the landlord was ordered to pay over $14,000 in compensation. In this case, the landlord issued a Notice to Vacate after the tenants tried to negotiate for a lower rent increase.

Given ACAT can order the payment of compensation if ACAT is not satisfied that the landlord’s stated intention is genuine, please notify us if the landlord would like to withdraw or extend the Notice to Vacate. If he/she wishes to rely on the Notice to Vacate, please provide written answers to the questions above.

*[If you think there are no grounds for the Notice to Vacate] [Delete if not applicable]*

In my opinion, there are no grounds for you to serve a Notice to Vacate on me, and therefore no basis for terminating the tenancy agreement. I will not be vacating the property.

Yours sincerely,

[Your signature]

[Your name]

[Template updated: 2 March 2021]