



THE UNIVERSITY OF
MELBOURNE

3 May 2016

Campus Community Team
University of Melbourne

Residential Tenancies Act Review – Public consultation

Consumer Affairs Victoria
GPO Box 123
Melbourne Vic 3001

By email: yoursay@fairersaferhousing.vic.gov.au

Dear Sir / Madam,

**Submission regarding the ‘Rights and Responsibilities of Landlords and Tenants’
Issues Paper**

The University of Melbourne Campus Community team welcomes the opportunity to provide comments in relation to Consumer Affairs Victoria’s (CAV) ‘Residential Tenancies Act Review – Rights and Responsibilities of Landlords and Tenants’ Issues Paper.

General comments

The Residential Tenancies Act 1997 covers the rights and duties of landlords and tenants in a broad sense. However the Act notably appears to fall short in recognising issues around co-tenancy and share-housing, issues which are a common experience for many single, low income and/or young people.

As student housing advisers that provide information, advocacy and support of many years in combined experience, our submission will focus on issues that affect the growing local and international student population and the accommodation providers that service what has now become one of Victoria’s leading industries.

The integral difficulty of renting a home is the perceived power difference between the person renting a property as a home and the person who could potentially ask them to leave. This is often all the more apparent in low cost housing or subletting arrangements that are often entered into by students and first-time renters. These consumers should have a right to a stable home and value for money despite their lack of tenancy experience or options. Their student experience and success will be significantly dependent on the Victorian rental market and its regulatory environment.

Question 4 – Screening Practices

Issue: Requesting appropriate contacts

Many students report being asked by real estate agents to provide a contact number from their University or tertiary institution. It is difficult to see the relevance of this request, particularly for students who are just beginning a course who could easily provide proof of their enrolment in other ways.

Recommendation: Requests for contacts should include a reason why that contact has been included (i.e. a financial reference, a tenancy history reference, a personal reference).

Questions 11 – 12 Beginning a tenancy

Issue: Tenants' possession and the selling of the property

When a tenant enters into a tenancy agreement, they have a reasonable expectation that they will have exclusive possession, privacy and quiet enjoyment of the property. Presently, landlords are not obliged to disclose whether they intend to sell a property during the life of the lease. Selling a property will often involve a sales campaign and inspections for several weeks, seriously compromising the privacy and quiet enjoyment of the tenant. Many tenants have approached student services expressing dismay when they have not been warned that they will have to host a sales campaign soon after signing a lease.

Recommendation:

Tenants should have a right to know if their home is to be bought or sold during the lease period. If a landlord intends to sell the property, this information should be included in the lease, otherwise the landlord should apply to VCAT to do so on the grounds of unforeseen hardship, similar to the provisions of [section 234](#).

Issue: Sub-leasing properties and sub-lessors failing to give adequate details

Students often report to our services that they are sub-leasing properties from other tenants, usually through informal arrangements. One recent example is of a household full of students who were visited by an owner who said that he had no idea the property was being used as a rooming house and that he would be evicting them. The property was run by a company whose business model appears to have been renting and subleasing properties, often without the owner's knowledge. The tenants were unaware of this lack of security in their tenure.

Recommendation:

As consumers, tenants should be confident of what they are 'buying into', and that their tenure is secure. [Section 66](#) should be expanded - Details of the actual property owner should be included, and if a sub-letting arrangement exists, this should be declared at the commencement of the tenancy.

Issue: Consideration periods

Student housing advisers are often approached by interstate or international students who have been asked to enter into a rental contract before entering Victoria or seeing the rental property, but have been disappointed when they arrive when they find that the property might not be as advertised, or that there are problems such as noise, privacy or safety concerns. Other students arriving in Melbourne have reported feeling pressured by agents and landlords into signing detailed tenancy agreements. These issues are all the more severe for students looking for accommodation, often at the same time of year. Unfortunately exploitative and unscrupulous accommodation providers are now a well-known feature of the

student housing market, and are a particular concern when considering the value international students add to the Victorian economy.

Recommendation:

We support consideration periods and believe that this will be conducive to a healthier rental market.

Question 13 – Form of documents and manner of service

Issue: *Landlords and sub-lessors failing to supply contact details.*

Students who are renting regularly report to our services that landlords and sub-lessors casually breach [section 66](#) of the Act by failing to provide postal addresses. This seems to particularly be endemic with international students who often fall into informal renting and sub-letting arrangements while looking for low-cost housing. Students often report that the only contact with their landlord is via a mobile phone number, email address or social media. Obviously this practice makes it almost impossible to serve notices or pursue legal action against the landlord.

Recommendation:

We submit that tenants should be able to send valid notices via electronic or digital technology when the landlord has failed to provide details as required under [section 66](#). As landlords rarely have the problem of not having a tenants address, documents to tenants should still be served by mail to ensure secure delivery, although we would welcome the additional requirement of landlords also serving notices electronically to ensure service has been effected.

Question 14 – Duties and breaches of duty

Issue: *Difficulties faced by tenants wishing to break a lease when a landlord is breaching the Act*

The current provisions for breaking a lease include at least two applications to the Victorian Civil and Administrative Tribunal (VCAT). For example, if a tenant has a major repair that is not attended to after the tenant has followed through on the necessary preliminaries waiting for an inspection from Consumer Affairs Victoria, the tenant must firstly seek a VCAT order for a landlord to complete the repair. If it is still not done then the tenant may only then seek an order to break their lease on the basis of the landlord breaching the VCAT order. This is inconsistent when one takes into account the relative rapidity that a landlord can end a lease via a notice to vacate when a tenant is simply in breach of the Act.

Recommendation:

- If a tenant is obliged to apply to VCAT and a landlord is found to be in breach of their duties, a portion of the rent should automatically be placed into the VCAT special account with a view to compensating the tenant.
- The tenant should concurrently be given a right to break the lease on short notice and without cost if an order is not complied with within a certain period of time, without a second VCAT hearing. This should be a decision made at the time of the first (and only) hearing.

Issue: *Serious breaches of quiet enjoyment by the landlord*

A common complaint from students are breaches of quiet enjoyment and privacy by landlords or sub-lessors. In some cases, this may be continued visits by the landlord and/or ignoring requests to provide legal notice. In one case a tenant with a young family had a new

unit built in her back yard soon after signing her lease. Requests for compensation were ignored while the property exterior was strewn with sharp and dangerous debris for months while tradesmen and the landlord entered at will.

Recommendation:

Serious and deliberate breaches of the tenant's quiet enjoyment should be a prosecutable offence under the Act.

Question 20 – Breaches of additional terms

Issue: *Onerous terms in rental contracts*

Our services see a myriad of tenancy agreements, formal and informal, and in many cases with a large number of additional terms. It is not uncommon to see these terms attempting to reduce a tenant's rights under the Act, or to include actions that financially disadvantage the tenant. Students who have just arrived in Melbourne and are looking for a property quickly (along with hundreds of others trying to find accommodation before classes begin), are often at a disadvantage, especially when they are presented with odd additional terms on the day they intend to move in. They are all the more vulnerable by being inexperienced renters.

Recommendation:

The current Act protects landlords for all reasonable losses caused by a tenant. [Section 472](#) is sufficient to deal with issues around lease terms. We have deep concerns about the possible further legal strengthening of additional and ad hoc lease terms.

Question 21 – Pets in rented premises

Issue: *Pets*

Pets are considered by many people to be beneficial to their emotional health and wellbeing. Many would also consider them being part of the cultural fabric of Australia. Provisions exist in the Act for landlords to claim losses caused by pets.

Recommendation:

The current Act sufficiently protects landlords for damage to their property under [section 61](#) and [section 472](#). There should be no change.

Question 23 – Entry to premises when premises are being sold

Issue: *Selling the property while a lease is extant*

Selling a property is usually a foreseeable event. Presently, tenants who sign a lease do not have to be told that a property is about to be put on the market, and that they will be subjected to opening up their home to prospective buyers via a sales campaign. Many local and international students report that they are shocked that they are expected to allow countless strangers into their home.

Recommendation: Tenants expect and should have a right to exclusive possession of a property if they entered into a contract with that expectation. The property should not be sold while a tenancy agreement has been entered into unless the landlord can prove unforeseen hardship or has previously arranged and notified the tenant at the commencement of the lease.

Issue: *Quiet enjoyment*

Many students who are renting, particularly international students, feel they don't have a choice about objecting to a landlord when their quiet enjoyment is breached. Many tenant student tenants report that they are unsure about 'what is reasonable' in regard to opening their home to inspections by potential buyers. Students have reported being given less than an hours' notice that buyers will be shown through the property. In other cases, students have reported long or ongoing sales campaigns where they must make the property available. [Section 67](#) of the Act does not give a definition of when quiet enjoyment has been breached in the circumstances of a sale.

Recommendations:

- It would be to the advantage of both tenants and landlords if the Act specified the rights and duties of the landlord when selling a property, such as: maximum number of inspections per week; length of sales campaigns; maximum number of prospective buyers in a property.
- As previously recommended, tenants should be advised that a property is going to be sold during the lease period at the time they sign their leases.
- If the lease agreement states the property is to be sold, then compensation and limits on inspections should be clearly defined in the lease.

Question 25 – Issues with sub-letting

Issue: *Share housing*

Share housing is a financial necessity for many people on low incomes such as students, something that has been the case for decades, and perhaps even more so over the last few years of historically high rental and housing costs. We feel that these tenants are especially vulnerable as their choice of housing is often overwhelmingly based on cost and their proximity to their educational institution. This is broadly a young and transient population, in that they may move because of graduation, due to work commitments or because of changes to income, which may involve household members leaving at different times. It is time the Act addressed the needs of the many Victorians who are at a life stage where they are single and have not started a family or have established the financial wherewithal to rent alone or buy a home.

At present landlords can refuse permission to a tenant to change co-tenants, compelling the tenant to apply to VCAT. The tenant must prove that the landlord is unreasonably withholding consent – although there is no obligation on the landlord to give a reason for withholding consent. We contend that the current provisions of [section 82](#) requiring a tenant to apply to VCAT if the landlord refuses permission are overly onerous on tenants in share housing, particularly if an owner does not give a reason for their decision.

Recommendations

The Act is silent on the reasons a landlord can refuse permission on bringing in a co-tenant. [Section 82](#) should be expanded to include prescribed reasons as to why a landlord may refuse permission to sublet. This would clarify arrangements for both landlords and tenants. Prescribed reasons could include overcrowding in the rental property, or failure to provide identifying documents.

Issues: *Real estate charges for changes to tenant composition in share housing.*

Many students approach our services for advice on changing names on leases or transferring names on RTBA bonds. In some cases we have seen this can be over \$500. There is an inconsistency that these charges would be considered a breach of [section 84](#) in the case of subletting, yet charging a fee for allowing co-tenants is acceptable. It is time for

this loophole to be closed. It particularly affects tenants on low incomes who are obliged to move into share housing.

Recommendation:

[Section 84](#) should be extended, and fees should not be charged for simple changes to the lease or bond arrangements.

Question 27 – Termination by a tenant

Issue: *Social housing and hardship*

Community and social housing is usually offered to people who require financial or other support via support agencies and therefore have demonstrated some form of hardship. We also acknowledge the waiting lists for public housing, which have been years-long in metropolitan regions for many years.

Recommendation:

For the above reasons we support the proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing by a community housing provider.

Questions 28-30 Notices to Vacate

Issue: *No reason notices to vacate*

Moving house is a difficult time for most people and this should be recognised in the Act. For the most part, the provisions around notices to vacate are balanced between the rights of the tenant and landlord. Most reasons for a landlord taking possession of a property are covered under Part 6 of the Residential Tenancies Act. However, we do feel the 120 day 'no reason' notice to vacate is unnecessary, and open to abuse by retaliatory landlords.

Recommendations:

120 day notices given under [section 263](#) should include a reason for the termination. A tenant should have the right to challenge these notices for up to 60 days.

Issue: *No reason notice to vacate – end of fixed term tenancy*

[Section 261](#) allows a landlord to give a tenant a notice to vacate at the end of a fixed term tenancy. These are commonly used by student accommodation providers, with the vacation date set the day after the lease ends. These notices will almost always financially disadvantage the tenant. Being bound to a contract, they must make the decision to either move before their lease ends, obliging them to incur lease breaking costs and double rent for a time, or hopefully arrange an ongoing tenancy on the day they move out. This is a particularly difficult decision for Melbourne's many international students, who often do not have the contacts to arrange transitional accommodation between leases. The practice also allows for an element of duress – tenants in student accommodation often report that they are pressured into either signing a new lease or being evicted.

Recommendation:

- [Section 261](#) should be repealed.
- Tenants should not incur lease breaking costs if they have been served with, and comply, with a notice to vacate during the lease period. There should be a 14 day notice of intention to vacate (similar to other notices to vacate) served by the tenant in the last month of the lease agreement.

Questions 31 – 32 Lease breaking

Issue: *Hardship provisions of the Act.*

[Section 234](#) allows for a tenant to reduce their tenancy agreement in cases of unforeseen hardship, if the tenant were to suffer greater hardship than the landlord in cases where the lease was not reduced. We have seen students suffering health crises that have necessitated them breaking their lease. Unfortunately, despite this section of the Act being in place to protect tenants, even if a tenant goes to the effort of applying to VCAT to successfully prove a hardship case, in practice a landlord is still able to claim all regular lease-breaking costs such as compensation, making a hardship application virtually pointless. Secondly, the hardship provisions can only be used *before* a tenant has vacated the property – which is often impractical in cases of household violence or serious illness/injury.

Recommendation: The Act should include a provision to limit a landlord's claim for lease-breaking costs in cases where a tenant has successfully satisfied the Tribunal that they will suffer hardship by continuing the lease, as per the provisions of section 234. The Act should also enable the tenant to make a hardship claim after they have vacated the property.

Issue: *Death of a tenant*

Apart from the many other difficulties and challenges a death of tenant can cause, it may also affect the household financially; particular if the deceased was a major contributor to the rent.

Recommendation

[Section 228](#) allows for a tenancy to be terminated in the case of the death of a sole tenant. This should be extended to allow households to move on by giving 28 days' notice of intention to vacate within 60 days of the death of a household member.

Question 37 – Conduct of agents

Issue: *Student apartments and property managers failing to comply with the Act.*

One large student apartment provider openly admitted to our service that they kept all their tenants' bonds in a trust account, rather than with the Bond Authority. Presumably the investors or landlords were not aware of this practice.

Recommendation:

Penalties in the Act should be extended to apply to managing agents who flagrantly ignore the Act.

If you would like to discuss any of the above comments in further detail, please contact Ben McCarthy in the Campus Community team at the University of Melbourne on mcb@unimelb.edu.au