

# Rights and Responsibilities of Landlords and Tenants

## Issues Paper

Residential Tenancies Act Review

FAIRER  
SAFER  
HOUSING

## Contents

<b>The Review of the Residential Tenancies Act</b>	<b>4</b>
Getting involved and having your say	4
The stages of the Review	5
<b>Glossary</b>	<b>5</b>
<b>Acknowledgments</b>	<b>5</b>
<b>Questions for consideration</b>	<b>6</b>
<b>Executive Summary</b>	<b>8</b>
<b>1 Scope of paper</b>	<b>9</b>
<b>2 What are ‘rights and responsibilities’ in a tenancy?</b>	<b>9</b>
<b>3 Before a tenancy</b>	<b>11</b>
3.1 Applying for a tenancy	11
3.1.1 Discrimination against prospective tenants	11
3.1.2 Other screening practices during the application process	12
3.1.3 Tenancy databases	13
3.2 Beginning a tenancy	14
3.2.1 Form of agreement	14
3.2.2 Adequacy of disclosure	14
3.2.3 Form of documents and manner of service	16
<b>4 During a tenancy</b>	<b>17</b>
4.1 Duties and breaches of duty	17
4.1.1 Breaches of duty	19
4.1.2 Form of the tenancy agreement and breaches of additional terms	21
4.1.3 Pets in rented premises	22
4.2 Entry to premises	23
4.2.1 Entry to premises where premises are to be sold	25
4.3 Sub-letting, assignment and the sharing economy	26
4.3.1 Issues with sub-letting	27
4.3.2 Issues with assignments	27
4.4 Violence in managed premises	28
<b>5 At the end of a tenancy</b>	<b>29</b>
5.1 Terminations	29
5.1.1 Termination by landlord	29
5.1.2 Termination by tenant	30
5.1.3 Notices to vacate	30
5.1.4 Lease breaking	32

5.2 Goods left behind	33
5.2.1 Personal documents	33
5.2.2 Goods of monetary value	34
5.2.3 Issues with goods left behind	34
5.3 Tenancies and family violence	35
5.3.1 Creation of a new tenancy agreement	35
5.3.2 Early termination of tenancy agreement	36
5.3.3 Changing locks	36
5.3.4 Issues with tenancies and family violence	36
<b>6 Conduct of agents</b>	<b>38</b>
<b>7 Appendices</b>	<b>39</b>
7.1 APPENDIX 1: PRESCRIBED RESIDENTIAL TENANCY AGREEMENT	39
7.2 APPENDIX 2: NOTICES TO VACATE	42
7.3 APPENDIX 3: NOTICES OF INTENTION TO VACATE	44

## The Review of the Residential Tenancies Act

Since the *Residential Tenancies Act 1997* (the Act) was introduced, the rental market has changed. More Victorians are renting for longer, the renting population has become more diverse, and the numbers of property managers and landlords have increased.

The Government is reviewing Victoria's rental laws to ensure a modern and dynamic rental market, in which tenants are safe and secure, and which will meet the current and future needs and expectations of tenants and landlords.

This paper is the third of a series of issues papers, which encompass a broad range of issues relating to the operation of the Act. The papers focus on the following themes:

- security of tenure
- bonds, rent and other charges
- rights and responsibilities of landlords and tenants
- dispute resolution
- property conditions and standards, and
- alternative forms of tenure.

Consultation with stakeholders and members of the public will capture a wide range of views and experiences that will enhance the Government's understanding of the Victorian rental market.

In mid-2016, an Options Paper will outline proposals for both legislative and non-legislative reforms drawing on the findings of the Review and public consultation.

You can access this issues paper, along with further information about the Review, from the Fairer Safer Housing website at [fairersaferhousing.vic.gov.au](http://fairersaferhousing.vic.gov.au).

## Getting involved and having your say

We invite your views and comments, as well as your responses to the series of preliminary questions posed throughout each issues paper as a guide for writing your submission.

We also welcome your suggestions for other questions or issues that should be considered leading up to the release of the Options Paper.

Until **3 May 2016** you can make a submission:

**Online, by registering at:**

[fairersaferhousing.vic.gov.au/renting](http://fairersaferhousing.vic.gov.au/renting)

**By email:**

[yoursay@fairersaferhousing.vic.gov.au](mailto:yoursay@fairersaferhousing.vic.gov.au)

**Or by mail:**

Residential Tenancies Act Review  
Consumer Affairs Victoria  
GPO Box 123  
MELBOURNE VIC 3001

Note: Unless you label your submission as confidential, your submission or its contents will be made publicly available in this and any subsequent review process. Submissions may be subject to Freedom of Information and other laws. Consumer Affairs Victoria reserves the right to not publish information that could be seen to be defamatory or discriminatory.

## The stages of the Review

Material will be released in three stages in the course of the Review, to which you will be invited to respond. All papers will be available via the Fairer Safer Housing website at [fairersaferhousing.vic.gov.au/renting](http://fairersaferhousing.vic.gov.au/renting).

Note that Stage 1 is complete and the Review is now in Stage 2.

Stage 1	<i>Laying the Groundwork</i> Consultation Paper identifying the changing characteristics and trends in the Victorian rental market	June to August 2015 (complete)
Stage 2	Issues Papers	Late 2015 to early 2016 (underway)
Stage 3	Public Options Paper setting out legislative and non-legislative proposals for reforming the <i>Residential Tenancies Act 1997</i>	Mid 2016

## Glossary

CAV	Consumer Affairs Victoria
RTBA	Residential Tenancies Bond Authority
VCAT	Victorian Civil and Administrative Tribunal
VLRC	Victorian Law Reform Commission

## Acknowledgments

This paper has been drafted in consultation with:

- Consumer Affairs Victoria
- Department of Environment, Land, Water and Planning (Forward Policy and Business Strategy Planning)
- Department of Health and Human Services
- Department of Premier and Cabinet
- Department of Treasury and Finance

Submissions made to the Review during Stage 1 have been taken into consideration in the drafting of this issues paper.

## Questions for consideration

### **Before a tenancy**

- 1 Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?
- 2 What are the obstacles to tenants challenging discriminatory treatment and seeking remedies, and what are the solutions to these obstacles?
- 3 How should tenants and landlords be informed about their rights and obligations in relation to discrimination, for example under the *Equal Opportunity Act 2010*?
- 4 What types of information is used by landlords and agents to assess the suitability of rental applicants?
- 5 When landlords and agents are provided with information about prospective tenants, what measures can be taken to ensure it is used appropriately?
- 6 What is your view on the stakeholder proposal to prescribe a standard application form, and what information requests should be required to be included in such a form?
- 7 What are the benefits and risks of landlords and agents requiring a security deposit from prospective tenants to obtain a key to view premises?
- 8 What other issues arise from the operation of tenancy databases, and how do these impact on prospective tenants?
- 9 What measures do landlords, agents and database operators have in place to protect personal information about tenants and to ensure it is used appropriately?
- 10 What is your view on the stakeholder proposal to establish a database that tenants can use to assess the reputation or reliability of a prospective landlord or agent?
- 11 What additional information should a landlord be required to give a tenant at the start of a tenancy, if any?
- 12 In what circumstances would the stakeholder proposal of a consideration period be appropriate for a tenancy agreement, and what would be a suitable duration?
- 13 What requirements and approaches, including communication channels and support, should govern the form and service of documents for tenants, landlords and agents?

### **During a tenancy**

- 14 How should the current statutory duties for both landlords and tenants be reformed to meet their contemporary needs?
- 15 What are your views as to whether the length of time currently allowed for remedying the various breaches outlined in the Act is appropriate? If the length of time is not appropriate, what other time should be specified?
- 16 Where a breach notice is issued, should the person who received it have the option of remedying the breach or paying compensation in order to comply with the notice, or should compensation only be permitted where the breach cannot be remedied?
- 17 What, if any, measures should be available for tenants and landlords to address a breach of duty before seeking redress at VCAT?
- 18 Should the Act require initial compliance orders for a breach of duty to be limited in duration, and if so what limitation is appropriate?
- 19 What are the advantages and disadvantages of the current prescribed tenancy agreement, compared with a more comprehensive agreement?

- 20 What arrangements should apply in respect of the inclusion and enforcement of additional contractual provisions that go beyond the prescribed agreement and statutory duties?
  - 21 What is the right balance between the interests of tenants and landlords in respect of pets in rented premises? What reforms, if any, are required to current arrangements?
  - 22 What entry to premises arrangements strike the right balance between the rights of tenants to quiet enjoyment and the rights of landlords to enter premises and what, if any, reforms are required?
  - 23 What other issues and factors arise from current arrangements for entering a property that is to be re-let or sold and what, if any, reforms are required?
  - 24 Does the Act require amendment to accommodate the growth of short term accommodation platforms? If so, what amendments should be considered?
  - 25 What other reforms, if any, are required to balance the interests of landlords and tenants in respect of sub-letting and lease assignments?
  - 26 What issues arise in practice for residents and on-site managers in relation to the use of notices to leave because of violence in managed premises, and should any amendments to current arrangements be considered?
- At the end of a tenancy**
- 27 What are your views on the stakeholder 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?
  - 28 For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?
  - 29 For what reasons should a tenant be permitted to end a tenancy, and what notice periods should a landlord be given?
  - 30 What remedies or defences should be available to a tenant to prevent bad faith by a landlord who is attempting to end a tenancy?
  - 31 What are the appropriate approaches to compensate a landlord where a tenant breaks a lease?
  - 32 What, if any, additional protections should be provided to a tenant who breaks a lease or wishes to end a lease early due to circumstances such as financial hardship, family violence or illness?
  - 33 What arrangements should apply to goods that a tenant leaves behind at the end of a tenancy?
  - 34 Are there any issues in relation to other rights and responsibilities that occur before, during, or at the end of a tenancy not discussed in this paper that should be considered in this Review?
  - 35 For tenants experiencing family violence, what changes to the Act will further promote their access to safe and sustainable rental housing?
  - 36 How are the interests of the landlord best protected in circumstances where family violence impacts on an existing tenancy?
- Conduct of agents**
- 37 Does the Act need to specifically deal with the conduct of agents acting on behalf of landlords, and if so what reforms would address this conduct?

## Executive Summary

The Victorian Government is reviewing the *Residential Tenancies Act 1997* (the Act), which outlines rules governing rental agreements between landlords and tenants in residential housing. The Review aims to assess whether these rules meet current community expectations and are capable of addressing the parties' longer term needs in a market that is continuing to evolve.

The Victorian Government committed to the Review as part of its *Plan for Fairer, Safer Housing*, which envisages safe, affordable and secure housing for all Victorians. As part of this Plan, the Government has committed to examine the feasibility of long term leases, annual rent increases and landlord access to the property in cases of exceptional circumstances. In addition, the Government noted that there was scope to provide greater protection to residents of caravan parks and moveable dwellings.<sup>1</sup>

With growing numbers of Victorians renting, and for longer periods, the Act is relevant for more Victorians today than ever before. Unlike other markets, where providers and clients engage in one-off transactions, the tenant-landlord relationship is comparatively long term and there is scope for many different situations to arise over the course of a tenancy.

As noted in Chapter 2, the Act creates a framework in which the needs and expectations of the parties in a tenancy relationship are balanced through a series of rights and responsibilities. Given that the rental market and community expectations change over time, there is a need to ensure that the provisions in the Act remain relevant and suitable to the issues that arise in the course of a residential tenancy.

In addition to facilitating stable and secure tenancies, striking a fair balance between the rights and responsibilities of tenants and landlords is also essential to ensuring that conditions support landlords to continue to provide accommodation in the rental market.

Chapter 3 explores the rights and responsibilities provided for in the Act that precede the formation of a tenancy, including the tenancy application process, the form of the tenancy agreement, and requisite disclosures at the start of the tenancy. Stakeholder feedback received to date has raised concerns about discrimination and screening practices that can unfairly disadvantage prospective tenants, the adequacy of current pre-contractual information to ensure the tenant understands important aspects of the tenancy, and whether the requirements around service of notices and other documents reflect current community practices and the increased use of digital and online technology.

Chapter 4 examines rights and responsibilities during a tenancy, including duties owed by landlords and tenants, breaches of duties, rights of entry to premises, and sub-letting and assigning tenancy agreements. Stakeholders have questioned whether particular duties align with contemporary norms, and raised concerns about the enforceability of additional terms in the tenancy agreement. Concerns have also been raised about the balance between landlord rights of entry to premises and the tenant's quiet enjoyment, particularly where the premises are being sold or re-let, and whether the Act should address the practice of tenants renting to short term guests and improve the process for lease transfers (or assignments).

Matters relating to the end of a tenancy, including terminations, provisions dealing with goods left behind, and family violence, are discussed in Chapter 5. The majority of issues raised by stakeholders around terminations concern improving protections for tenants, ensuring notices to vacate are not misused by landlords, and regulating lease break costs. Stakeholders have also suggested streamlining the goods left behind procedures, and increasing protections for tenants affected by family violence, including the ability to change tenancy arrangements before a final intervention order has been issued and allowing for the apportionment of liability between the affected tenant and the perpetrator.

Areas of concern that have been raised relating to the conduct of agents are noted in Chapter 6.

---

<sup>1</sup> Labor's Plan for fairer, safer housing, 26 November 2014.

## 1 Scope of paper

The Act provides a legislative framework regulating four types of residential tenancy arrangements:

- general tenancy agreements for rented premises (both in the private and social rental sectors)
- residency rights for rooming house residents
- residency rights for caravan park residents, and
- site agreements for park residents who own moveable dwellings.

The Act also establishes a framework which includes the roles and functions of relevant agencies, courts and tribunals (including Consumer Affairs Victoria (CAV) and the Victorian Civil and Administrative Tribunal (VCAT)), establishes the Residential Tenancies Bond Authority (RTBA) and the system for administering bonds, and provides mechanisms for resolving residential tenancy disputes.

This paper focuses broadly on the rights and responsibilities of tenants and landlords under a tenancy agreement, as well as residency rights arising under the Act. While the main focus is on general tenancy agreements for rented premises, key differences raised by other tenure types are also noted where relevant. Other tenure types will also be considered in more detail in a separate issues paper.

Other areas that will be examined in more detail in separate issues papers are rights and responsibilities relating to rents and bonds, the on-selling of utilities to tenants by landlords in the form of embedded networks, urgent and non-urgent repairs and the condition of rental premises (including the condition report, modifications to premises and the provision of access to services including utilities), and disputes at VCAT and the process for landlords to regain possession of the premises.

Rights and responsibilities in this issues paper are grouped according to when they arise over the course of a tenancy. Issues relating to these rights and responsibilities were raised by stakeholders during preliminary consultations, and in response to the consultation paper, *Laying the Groundwork*, which marked the commencement of the Review.

This issues paper aims to elicit feedback on the nature, extent and impacts of these and other issues, and draw out evidence and commentary from stakeholders.

## 2 What are ‘rights and responsibilities’ in a tenancy?

Certain features distinguish the residential rental market from markets for other goods and services, including the nature of the participants (predominantly private individuals), and the nature of what is provided (housing).

In Victoria, many of the providers in the private rental market are individuals for whom the rented premises represents a key investment. Economic drivers such as financial returns and retirement status act as important factors influencing decisions about when and whether to sell investment properties.<sup>2</sup>

Unlike many other markets, where providers and clients engage in one-off transactions that conclude with the delivery of an agreed product or service, the tenant-landlord relationship is ongoing and potentially long term. Over the course of a tenancy, there is scope for many different situations to arise depending on the

<sup>2</sup> See ‘Factors shaping the decision to become a landlord and retain rental investments’, Gavin Wood and Rachel Ong, for the Australian Housing and Urban Research Institute, RMIT Research Centre and Western Australian Research Centre, February 2010, AHURI Final Report No. 142 and ‘Understanding what motivates households to become and remain investors in the private rental market’, Tim Seelig, Alice Thompson, Terry Burke, Simon Pinnegar, Sean McNelis and Alan Morris, for the Australian Housing and Urban Research Institute, Queensland, UNSW-UWS and Swinburne-Monash Research Centres, March 2009, AHURI Final Report No. 130, both cited in Fairer Safer Housing consultation paper *Laying the Groundwork*, page 38.

parties' circumstances at any given time, along with other factors that may be outside their control. Market participants also may not see themselves as being in a commercial transaction because of the nature of residential accommodation as a human need.

This relationship between landlord and tenant is defined by the needs and expectations of the two parties, which reflect their differing interests in the rented premises: the landlord owns the premises and makes it available as accommodation on a leasehold basis for their commercial benefit, and the tenant desires access to the premises as somewhere to live (see Table 1 below).

These needs and expectations inform the various rights and responsibilities that set boundaries around what each party can and cannot do, supporting them as they navigate through the tenancy relationship.

**Table 1: Needs and expectations of the parties**

Tenant	Landlord
The premises are their residence and home	The premises are a significant asset that they own
In exchange for paying rent, the tenant will have exclusive possession of the premises	The landlord will receive rent in exchange for delivering possession of the premises to the tenant
During the tenancy, the tenant can have quiet enjoyment of the premises	During the tenancy, the landlord can enter the premises if there is a legitimate reason
The tenant takes care of the premises, and takes responsibility for any damage they cause	The landlord takes responsibility for maintaining the premises in good repair
At the end of the tenancy, the tenant has no ongoing responsibilities in relation to the premises	At the end of the tenancy, the landlord's asset is returned to them in its original condition (apart from reasonable wear and tear)

The Act does not legislate for every possible eventuality in a tenancy, avoiding in large part highly detailed, prescriptive rules that become rigid and outdated over time.

Instead, the essential rights and responsibilities are stated in broad terms to allow tenants and landlords to tailor, to some extent, a tenancy agreement to the particular circumstances, provided the requirements of the Act are met. The parties often agree to terms and conditions that reflect behavioural norms set by contemporary community practices.

However, the rental market and community expectations are fluid and subject to change. Trends that might currently be managed by private agreement between the parties can mature and, depending on particular market conditions, gain greater significance and become difficult to resolve due to an absence of relevant provisions in the Act.

Such developments highlight the need to ensure that the Act's coverage remains appropriate and relevant, facilitating stable and secure tenancies by meeting the community's needs and expectations, including the needs of vulnerable and disadvantaged tenants.

Vulnerable and disadvantaged tenants face particular challenges in having their needs met in the private rental market, whether because of difficulties in accessing private rental housing or in sustaining viable tenancies. Such difficulties can lead to increased demands on social housing, homelessness and related services.

Striking a fair balance between the rights and responsibilities of tenants and landlords is also essential to ensuring that conditions support landlords in continuing to provide accommodation in the market.

### 3 Before a tenancy

To the extent that the Act regulates the conduct of prospective tenants and landlords before a contractual relationship has been formed, the relevant provisions aim to balance giving the landlord the ability to select their preferred tenant with enabling prospective tenants to compete for tenancies on a level playing field.

The Act also imposes a framework for when a tenancy agreement is formed, ensuring that all tenancy agreements have the same basic features and meet the same minimum requirements, whether the agreement is written or verbal.

#### 3.1 Applying for a tenancy

The legislation does not prescribe the form a tenancy application must take, but sets the following key requirements before a valid contractual relationship is formed:

- landlords cannot refuse to rent out premises to a person with children, except in certain limited circumstances,<sup>3</sup> and
- tenancy databases cannot be used to screen prospective tenants except in the manner set out in the Act.

Tenancy databases are discussed in greater detail in section 3.1.3.

##### 3.1.1 Discrimination against prospective tenants

Allegations of discrimination and screening of tenants in the housing market were a common theme in the public submissions to the consultation paper, *Laying the Groundwork*.

Factors that should be unrelated to maintaining a tenancy, such as race, family status, recent migrant/refugee status or citing an income source associated with a disability, are reportedly given unfavourable weighting during applications for a rental property.<sup>4</sup> This can create additional obstacles for certain tenant cohorts, such as people with a disability or mental illness (and their carers), single parents, those receiving some form of income support, people from culturally and linguistically diverse backgrounds, Aboriginal people and students.

A recently published study comparing the experience of Anglo, Indian and Muslim Middle Eastern prospective 'renters' in the Sydney rental market (at the enquiry and inspection stages of the housing search) suggests that the Anglo testers were treated significantly more favourably than the other testers on several dimensions that might meaningfully affect someone's search for housing.<sup>5</sup>

Other than provisions allowing landlords to refuse applicants with children under certain circumstances, and regulation of tenancy databases, the Act does not explicitly regulate discrimination against tenants, who must instead rely on the provisions of the *Equal Opportunity Act 2010* (the Equal Opportunity Act).

<sup>3</sup> For example, if the premises are the landlord's main residence, or if the location or design of the premises make them unsuitable or inappropriate for occupation by a child.

<sup>4</sup> See submissions to *Laying the Groundwork* from Carers Victoria (page 8); Victorian Aboriginal Legal Service (page 5); Victorian Council of Social Service (page 15); Victorian Multicultural Commission (pages 10-11); Women's Health West (page 6).

<sup>5</sup> Heather MacDonald, Jacqueline Nelson, George Galster, Yin Paradies, Kevin Dunn and Rae Dufty-Jones (2016) 'Rental Discrimination in the Multi-ethnic Metropolis: Evidence from Sydney', *Urban Policy and Research*, DOI: 10.1080/08111146.2015.1118376

The Equal Opportunity Act prohibits discrimination against someone on the basis of certain personal attributes (which include race, sex, age, family responsibilities, disability, employment activity, marital status, religious belief) when providing accommodation. A landlord or agent must therefore not treat a person unfavourably when they are applying for a rental property by:

- refusing or not accepting an application
- processing an application in a different way, or
- offering the property on different terms (for example requiring a higher amount for the bond).

In practice, it is difficult to detect or clearly demonstrate the extent to which landlords and agents unlawfully discriminate against applicants or tenants.<sup>6</sup> Landlords will select someone they believe to be the most desirable candidate and, apart from such factors as a person's income or rental history, there is nothing to exclude the influence of their personal beliefs and experiences.

Stakeholders have advocated for clearer links between the prohibitions in the Equal Opportunity Act and the Residential Tenancies Act to provide tenants with more tailored grounds for redress that they can access using channels currently provided for in the latter Act.<sup>7</sup>

#### Questions

- 1 Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?
- 2 What are the obstacles to tenants challenging discriminatory treatment and seeking remedies, and what are the solutions to these obstacles?
- 3 How should tenants and landlords be informed about their rights and obligations in relation to discrimination, for example under the *Equal Opportunity Act 2010*?

### 3.1.2 Other screening practices during the application process

Stakeholder submissions have noted that, in addition to 100 points of identification, some real estate agents require prospective tenants to provide a copy of a recent bank statement. While many agents advise applicants that they need this information to verify their previous rental history and ability to maintain regular payments, stakeholders have noted that some agents appear to be using this process to review the full range of an applicant's spending, and subsequently make moral judgments about how an applicant may be spending their income overall.<sup>8</sup>

Stakeholders have also raised the issue of discrimination by agents and landlords against tenants where the tenant proposes to use Centrepay for rent payments.<sup>9</sup> Centrepay is a free service that allows Centrelink recipients to pay their bills using their Government income.

CAV has received complaints from prospective tenants that agents or landlords have withdrawn rental offers when they attempted to use Director of Housing bond loans to pay for all or part of their bond. It is unclear how widespread such conduct is.

More generally, submissions raised concerns that confidential information provided in a tenancy application form may be used in a manner contrary to the purpose for which that information was originally collected,

<sup>6</sup> Victorian Equal Opportunity and Human Rights Commission, 'Locked Out: Discrimination in Victoria's Private Rental Market', August 2012, 16.

<sup>7</sup> See submissions to Laying the Groundwork from Tenants Union of Victoria (page 17); Victorian Aboriginal Legal Service (page 9).

<sup>8</sup> Melbourne City Mission submission to Laying the Groundwork, page 3.

<sup>9</sup> Ibid, pages 3-4.

for example by keeping it on file and using it for other tenancy assessments without the applicant's knowledge.<sup>10</sup>

While CAV provides a template tenancy application form on its website, the Act does not prescribe an application form, allowing landlords and agents the flexibility to use their own application form and request information neither required, nor prohibited by legislation.

As such, submissions have proposed that a standard tenancy application form be prescribed by the Act to encourage more uniform information collection practices amongst landlords and agents, and limit consideration only to those factors most relevant to maintaining a functional tenancy.<sup>11</sup>

Submissions have also sought clarification of the alleged practice of some agents requiring prospective tenants to leave a refundable cash deposit, or some other item of value, as security for temporary use of the key to access premises that they wish to inspect, citing concern that the practice excludes prospective tenants with insufficient disposable income or savings.<sup>12</sup>

#### Questions

- 4 What types of information is used by landlords and agents to assess the suitability of rental applicants?
- 5 When landlords and agents are provided with information about prospective tenants, what measures can be taken to ensure it is used appropriately?
- 6 What is your view on the stakeholder proposal to prescribe a standard application form, and what information requests should be required to be included in such a form?
- 7 What are the benefits and risks of landlords and agents requiring a security deposit from prospective tenants to obtain a key to view premises?

### 3.1.3 Tenancy databases

Also referred to as 'blacklists' or 'bad tenant databases', tenancy databases contain information about the renting history of tenants named on the database. Landlords or agents who pay a membership fee can use a database to search for and screen prospective tenants, and to list previous tenants. Tenants can only be listed for certain reasons prescribed by the Act.

Before a tenant is listed on a database they must be notified and given an opportunity to object. The Act sets out rules that must be complied with by landlords and database operators regarding the listing and use of information about tenants on such databases.

The Australian Privacy Principles in the *Privacy Act 1988* (Cth) apply to organisations that collect personal information and disclose that personal information to anyone else for a benefit, service or advantage. Stakeholders have nevertheless raised concerns about the actual use of tenancy databases by landlords, agents and database operators, noting the ability for information held on those databases to be used for other purposes, such as conducting credit checks.<sup>13</sup>

<sup>10</sup> Victorian Council of Social Service submission to Laying the Groundwork, page 15.

<sup>11</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 20.

<sup>12</sup> Melbourne City Mission submission to Laying the Groundwork, page 4.

<sup>13</sup> See submissions to Laying the Groundwork from Council to Homeless Persons (page 7); Victorian Council of Social Service (page 15).

Further concerns were raised about the practice of charging tenants to access their listings, and the absence of a mechanism that would allow some tenants to have their listings removed from databases in circumstances of extreme hardship, such as family violence.<sup>14</sup>

Whereas landlords can screen prospective tenants by obtaining information about them through the application process and consulting a tenancy database, there is no comparable source of information for prospective tenants wishing to conduct due diligence about their landlord or agent. There have been suggestions that VCAT or CAV could help address this lack of information by maintaining and publishing a register of landlords and agents found to have repeatedly breached the Act.<sup>15</sup>

#### Questions

- 8 What other issues arise from the operation of tenancy databases, and how do these impact on prospective tenants?
- 9 What measures do landlords, agents and database operators have in place to protect personal information about tenants and to ensure it is used appropriately?
- 10 What is your view on the stakeholder proposal to establish a database that tenants can use to assess the reputation or reliability of a prospective landlord or agent?

## 3.2 Beginning a tenancy

### 3.2.1 Form of agreement

Whether written or verbal, tenancy agreements must comply with the Act.

If the agreement is in writing, the landlord must give the tenant an unsigned copy of the standard form tenancy agreement prescribed by the Act (see Appendix 1).

In addition to the terms that are set out in the prescribed standard form tenancy agreement, the parties may agree to additional terms and conditions. However, any additional terms and conditions cannot exclude, restrict or modify (or attempt to exclude, restrict or modify) the operation of the Act, for example the protections it provides and the obligations it imposes. The Act makes it clear that any term that does this is invalid, as is any term of a tenancy agreement that VCAT declares to be harsh or unconscionable following an application to VCAT by the tenant.

### 3.2.2 Adequacy of disclosure

At the start of the tenancy, the landlord must also provide the tenant with:

- a copy of *Renting a home: A guide for tenants* (the CAV Renting Guide, generally known as the 'Red Book'), which summarises the rights and duties of landlords and tenants under a tenancy agreement
- two copies of the condition report recording the property's general condition (if the tenant is paying a bond)
- the landlord's full name and address for service of documents, and
- an emergency phone number for urgent repairs.

<sup>14</sup> See submissions to Laying the Groundwork from Council to Homeless Persons (page 7); Tenants Union of Victoria (page 66).

<sup>15</sup> See submissions to Laying the Groundwork from Barwon Community Legal Service (pages 8-9); Eastern Community Legal Centre (pages 13-14); Western Community Legal Centre (page 11).

If the landlord is using an agent, the tenant can be provided with the agent's full name and address for service of documents and the emergency number for urgent repairs can be the agent's phone or fax number. The landlord must also confirm whether the agent can authorise urgent repairs to be made and if so, the maximum amount able to be spent on these repairs.

Though the Act requires tenants to be provided with either the landlord or agent's emergency number in the event of an urgent repair, some tenants have reported receiving the phone number for a tradesperson instead. This can lead to confusion around who is hiring the tradesperson, as the legislation is premised on the notion that it is the landlord's responsibility to make these arrangements, in the first instance.<sup>16</sup> Moreover, despite any perceptions of efficiency, referring tenants directly to a tradesperson may actually generate difficulties for particular groups, such as tenants from culturally and linguistically diverse backgrounds. The potential ineffectiveness of the Act allowing an agent's fax number to be provided for urgent repairs has also been highlighted, particularly in the context of technological advances and widespread uptake of digital communication channels.

While landlords are required to give the tenant a full name and address for the service of documents, the full name and address can be that of an agent acting on the landlord's behalf. As a matter of practice, many tenants are given only the surname of the actual landlord, and stakeholders have raised concerns that this practice means that many tenants are unable to determine the party with whom they are contracting.<sup>17</sup> This can be problematic in the event of a dispute (where VCAT requires the name and the address of the landlord) and in enforcing any subsequent orders.

Stakeholders have also advocated for additional information to be required at the start of a tenancy, to ensure the tenant is adequately informed about important aspects of the tenancy and with a view to minimising potential future disputes, such as:

- a copy of any owners corporation rules; while this is a condition of the *Owners Corporations Act 2006*, submissions contend that a copy of the rules is frequently not provided to tenants
- a copy of any relevant insurance policy, especially if a tenancy agreement prohibits certain conduct on the basis of the landlord's insurance requirements
- instructions for appliances or facilities, including common area facilities such as car stackers
- details of boundaries of the rented premises and common areas
- details of the location of, and access to, utility meters and control valves, and
- evidence of the landlord's legal entitlement to rent out the property.<sup>18</sup>

A consideration period of three business days has been suggested so that tenants may seek independent advice about a tenancy agreement they have been given and request changes, if necessary.<sup>19</sup> In contrast, a 20 day consideration period exists under the Act for site agreements for park residents who own moveable dwellings.

<sup>16</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 61.

<sup>17</sup> See submissions to Laying the Groundwork from Eastern Community Legal Centre (page 10); Tenants Union of Victoria (page 61); Victorian Civil and Administrative Tribunal (page 2).

<sup>18</sup> See submissions to Laying the Groundwork from Tenants Union of Victoria (page 61); Victorian Civil and Administrative Tribunal (page 2).

<sup>19</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 23.

**Questions**

- 11 What additional information should a landlord be required to give a tenant at the start of a tenancy, if any?
- 12 In what circumstances would the stakeholder proposal of a consideration period be appropriate for a tenancy agreement, and what would be a suitable duration?

### 3.2.3 Form of documents and manner of service

Documents such as the tenancy agreement (if it is in writing), the Red Book and the two copies of the condition report are generally provided to tenants in hard copy. CAV has received feedback questioning whether, given current social practices and the increased use of digital and online technology, the form of these documents should be in hard copy, or whether they can be provided in an electronic format.<sup>20</sup>

For documents that need to be provided at the beginning of or during a tenancy, the Act provides that a notice or other document can be given to a person under the Act:

- personally
- by leaving it at their usual or last known place of residence or business, or
- by posting it to their last known place of residence or business.

Notices to vacate are the exception: the Act states that they must be given personally, sent by registered post to the tenant at the rented premises, or in any manner ordered by VCAT.

In addition to the methods of service set out in the Act, the *Electronic Transactions (Victoria) Act 2000* provides that, when a document needs to be served or given to a person, it can be served by electronic means (e.g. email), provided the person has first consented to give or receive information electronically. Service is deemed to have been effected once the electronic transmission is sent and is capable of being retrieved (i.e. read) by that person. Stakeholders have suggested that explicit provision could be made in the Act for electronic transmission of notices and other documents.<sup>21</sup> Proposed amendments to the Act in a bill currently before Parliament clarify that electronic transmission of documents in accordance with the *Electronic Transactions (Victoria) Act 2000* is a permitted manner of service for documents served under the Act, including notices to vacate.<sup>22</sup>

If a document is sent by ordinary post or by registered post, service is deemed to have been effected at the time when the document would be delivered in the ordinary course of post or registered post, unless the contrary is proved.<sup>23</sup> Recent changes to Australia Post's mail delivery service, introducing three delivery speeds (express, priority and regular), mean that longer delivery times may need to be factored in for posted documents to reflect the delivery speed chosen by the sender.

For notices to vacate being sent by post, the requirement for registered post acknowledges the significant impact such notices have for tenants, provides a more secure method of delivery than ordinary post, and provides evidence of delivery. While service is deemed to be effected when the registered post would ordinarily be delivered, in practice tenants who are not at home when the mail is delivered and who need to collect it from a local post office will not be aware that a notice has been served until it is collected. Under

<sup>20</sup> Real Estate Institute of Victoria submission to Laying the Groundwork, page 5 and stakeholder feedback raised with CAV through its day to day operations.

<sup>21</sup> See submissions to Laying the Groundwork from Real Estate Institute of Victoria (page 5); Victorian Civil and Administrative Tribunal (page 2).

<sup>22</sup> Consumer Acts and Other Acts Amendment Bill 2015, clause 24.

<sup>23</sup> *Interpretation of Legislation Act 1984*, section 49.

such circumstances, the tenant may not become aware of the landlord terminating the tenancy until the notice period has expired and the process to regain possession has commenced.<sup>24</sup>

Similarly, stakeholders have raised concerns that current requirements around service of documents may impact disproportionately on vulnerable and disadvantaged tenants. Examples given include where service is deemed to have been effected but the landlord has reason to believe that the tenant is absent from the rented premises, that the tenant lacks access to the mailbox, that the mailbox is insecure or damaged, or that the tenant experiences language barriers and an interpreter has not been used. It has been suggested that alternatives to registered post be considered for notices to vacate, including imposing additional requirements on landlords to ensure service has in fact been effected.<sup>25</sup>

#### Questions

13 What requirements and approaches, including communication channels and support, should govern the form and service of documents for tenants, landlords and agents?

## 4 During a tenancy

For the duration of a tenancy, the landlord's property becomes a home for the tenant and a source of rental income for the landlord, and each party is bound by their mutually agreed obligations.

The Act provides procedures that can be followed if obligations are not being met by the other party, and sets out rules that govern the key interactions between the parties that may arise during a tenancy. This can include circumstances such as when the tenant's conduct has an impact on neighbours, when the premises fall into disrepair, when landlord entry to the premises is required, and when the tenant wants to arrange for someone else to live in the premises.

### 4.1 Duties and breaches of duty

Tenants and landlords have a responsibility to meet the terms of their rental agreement and the Act. In addition to the obligations a landlord and tenant owe to each other because they are specified in the tenancy agreement ('contractual obligations'), landlords and tenants also owe each other obligations that are spelled out in the Act ('statutory obligations'). These statutory obligations are known as 'duties'.

The duties reflect the following broad principles for encouraging ideal behaviour within a tenancy:

- protecting the landlord's property rights, including their ability to choose who lives in it
- avoiding unnecessary intrusions on the tenant's space
- ensuring rented premises provide a safe, secure and habitable living environment for the tenant, and
- promoting respectful standards of conduct both between the parties to a residential tenancy arrangement, and any other people in their immediate surroundings (i.e. co-tenants and neighbours).

The duties in the Act based on these broad principles are set out below in Table 2. Many of the duties are also replicated as contractual terms in the prescribed tenancy agreement.

<sup>24</sup> Eastern Community Legal Centre submission to Laying the Groundwork, page 11.

<sup>25</sup> See submissions to Laying the Groundwork from Fitzroy Legal Service (pages 29-34); Tenants Union of Victoria (page 39).

**Table 2: Duties of tenants and landlords**

Tenant duties
Tenant must not use the premises or permit their use for an illegal purpose
Tenant must not use the premises or permit their use in any manner that causes a nuisance or interference with the reasonable peace, comfort or privacy of neighbours
Tenant must ensure care is taken to avoid damaging the premises, and must ensure reasonable care is taken to avoid damaging the common areas
Tenant must give notice of any damage to the landlord as soon as practicable after becoming aware of it
Tenant must keep premises in a reasonably clean condition
Tenant must not install fixtures or make any alteration, renovation or addition to the rented premises without the landlord's consent
Where a fixture is installed or premises altered, a tenant must restore the premises to their original condition, or pay compensation to restore the premises
Tenant who changes locks to an external door or window must give landlord a key as soon as practicable
Tenant must not change a lock in a master key system without the landlord's consent (landlord must not unreasonably withhold consent)
Tenant must permit a person exercising a legal right of entry to enter the premises
Landlord duties
Landlord must ensure the premises are vacant and in a reasonably clean condition on the agreed day of occupation
Landlord must give the tenant a copy of the Red Book at the start of the tenancy, as well as name and address details for service of documents and details for urgent repairs
Landlord must take all reasonable steps to ensure the tenant has quiet enjoyment of the premises
Landlord must ensure the premises are maintained in good repair, and must take reasonable steps to ensure that any common areas the landlord owns or controls are maintained in good repair
Landlord must ensure a replacement water appliance, fitting or fixture meets the prescribed minimum efficiency rating
Landlord must provide locks to secure external doors and windows
Landlord who changes locks to an external door or window must give tenant a key as soon as practicable

Stakeholders have identified various instances where particular duties might need further consideration; for example:

- the duty relating to nuisance or interference states that tenants must not use the premises 'in any manner' that causes a nuisance or interference with the reasonable peace, comfort or privacy of

neighbours: the phrase, 'in any manner', may be unreasonably narrow in practice as it may capture conduct perceived to be a nuisance but is nonetheless permissible by law<sup>26</sup>

- it has been alleged that it does not make sense that different standards of care apply, where tenants are required to take 'care' to avoid damage to rented premises, but are required to take 'reasonable care' to avoid damaging the common areas<sup>27</sup>
- while tenants have a duty not to interfere with the peace, comfort or privacy of neighbours, they do not have an express right to their own peace, comfort or privacy, emphasising a potential need to expand the landlord's duty to ensure reasonable steps are taken so the tenant has quiet enjoyment of the premises to ensure the tenant has privacy, peace and quiet and normal use of the premises<sup>28</sup>
- whether serious interference with a tenant's right to quiet enjoyment should be an offence under the Act<sup>29</sup>
- whether the Act sufficiently addresses repeated breaches relating to anti-social behaviour,<sup>30</sup> and
- in a highly competitive rental market characterised by strong demand for affordable properties, whether tenant confidence would be reinforced by an express duty for landlords to act honestly and in good faith, and with due care and diligence.<sup>31</sup>

#### Questions

14 How should the current statutory duties for both landlords and tenants be reformed to meet their contemporary needs?

### 4.1.1 Breaches of duty

The Act sets out the process to be followed when one of the statutory duties is breached by a party, including by the other party serving them a breach of duty notice, and if required, seeking compensation or compliance.

#### Breach of duty notices

A breach of duty notice is a formal warning to the party that they are not meeting their obligations.<sup>32</sup> The notice informs the breaching party of their breach, sets out the loss or damage caused by the breach, and states that within the required time (a timeframe set by the Act), the breach must be remedied if possible, or compensation must be paid. The notice also states that a similar breach must not be committed again.

For rented premises, the required time to remedy a breach or pay compensation is 14 days, except for a breach of the duty to permit a person exercising a legal right of entry to enter the premises, where the

<sup>26</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 59.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid, page 31.

<sup>29</sup> Western Community Legal Centre submission to Laying the Groundwork, page 21.

<sup>30</sup> Victorian Civil and Administrative Tribunal submission to Laying the Groundwork, page 3.

<sup>31</sup> Tenants Union of Victoria submission to Laying the Groundwork, pages 19.

<sup>32</sup> A breach of duty notice can be given for a breach of any of the statutory duties in Table 2, with three exceptions: the tenant's duty to not use the premises or permit their use for an illegal purpose (breaching this duty can instead result in a notice to vacate, discussed in greater detail in section 5.1.1), the tenant's duty to notify the landlord of any damage, and the landlord's duty to give certain information to the tenant at the start of a tenancy (breaching this duty can attract a penalty under the Act).

required time is 3 days. Stakeholders have suggested that the required time to rectify most breaches for general tenancies be changed from 14 days to 7 days.<sup>33</sup>

CAV understands that there is confusion about whether the Act gives the party who receives a breach of duty notice the choice between remedying the breach or paying compensation – and whether, if compensation is paid, they are still under an obligation to remedy the breach.

### **Compensation orders and compliance orders**

If the breach of duty notice is not complied with within the required time, the party who served the notice can apply to VCAT for a compensation order or a compliance order. Failure to comply with a compensation order or a compliance order issued by VCAT means the other party can elect to terminate the tenancy agreement with 14 days' notice (terminations are discussed in greater detail in section 5.1).

Concerns have been raised by stakeholders that VCAT compliance orders which are very broad in scope (for example, requiring a tenant to ensure they and their visitors do not cause any nuisance) and indefinite in length (often for the duration of the tenancy) can remain a trigger for eviction for years, imposing a significant burden on tenants by placing them at perpetual risk of eviction at short notice. It has been suggested that initial compliance orders should be limited to 6 months before lapsing, with longer periods for any subsequent compliance orders.<sup>34</sup>

### **Repeated breaches of duty**

In addition to providing a process if one breach of duty occurs, the Act also sets out an escalating procedure if multiple breaches of a duty occur over the course of a tenancy. If one party has already been given two breach of duty notices by the other party for a specific duty, and a breach of the same duty occurs a third time, the other party can elect to terminate the tenancy agreement ('the three strikes policy'). The three strikes policy can apply even if the prior breaches where a breach of duty notice was issued were remedied or compensation was paid.

The fact that breach of duty notices do not lapse has been identified by stakeholders as impacting on long-term tenancies and as a reason for introducing an expiry date of 12 months, in addition to allowing the three strikes policy to 'reset'.<sup>35</sup>

#### **Questions**

- 15 What are your views as to whether the length of time currently allowed for remedying the various breaches outlined in the Act is appropriate? If the length of time is not appropriate, what other time should be specified?
- 16 Where a breach notice is issued, should the person who received it have the option of remedying the breach or paying compensation in order to comply with the notice, or should compensation only be permitted where the breach cannot be remedied?
- 17 What, if any, measures should be available for tenants and landlords to address a breach of duty before seeking redress at VCAT?
- 18 Should the Act require initial compliance orders for a breach of duty to be limited in duration, and if so what limitation is appropriate?

<sup>33</sup> Little Real Estate submission to Laying the Groundwork, page 1.

<sup>34</sup> See submissions to Laying the Groundwork from Justice Connect Homeless Law (pages 21-22); Victoria Legal Aid (pages 12-13).

<sup>35</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 63.

#### 4.1.2 Form of the tenancy agreement and breaches of additional terms

As shown in Appendix 1, the prescribed standard form tenancy agreement is brief, listing only some of the key statutory obligations but including a general obligation for the parties to comply with the Act. Parties can only include additional terms and conditions in the agreement provided they do not exclude, restrict or modify a provision or the application of a provision of the Act.

Stakeholders have suggested that the prescribed tenancy agreement should be more comprehensive, in line with the tenancy agreement prescribed by New South Wales legislation which sets out the parties' obligations over 45 clauses.<sup>36</sup>

In contrast to breaches of statutory obligations, breaches of contractual obligations inserted by the parties in the tenancy agreement are not specifically enforceable under the Act. While the Act allows a tenant or landlord to apply to VCAT for a compensation order if they suffered loss because the other party breached either the tenancy agreement or duties under the Act relating to the tenancy agreement, the applicant cannot obtain a compliance order for a breach of the tenancy agreement. Another dispute resolution option open to the tenant or landlord is to take action against the other party for a breach of contract, with claims for less than \$10,000 being heard by VCAT as a small claim. However, enforcement of a claim such as this may be difficult in practice.

Stakeholders have suggested that the Act could allow for additional terms to be enforceable at VCAT, and that a regime for serving notices of contractual breaches would ensure a more uniform approach to resolving disputes in tenancies.<sup>37</sup> Other stakeholders have voiced concerns about an imbalance in bargaining power favouring landlords, in that landlords are practically able to dictate the inclusion of additional terms in a heated market where demand outstrips supply, with the effect that tenants end up agreeing to terms they feel they cannot contest.<sup>38</sup>

Further protections proposed by stakeholders to ensure that parties are not unfairly bound include:

- making it an offence to include in any tenancy agreement a term that attempts to exclude, restrict or modify the operation of the Act, similar to an offence in Queensland's residential tenancies legislation (currently, the Act provides that these terms are invalid, but there is no penalty for their inclusion in a tenancy agreement)
- introducing a duty to obtain explicit, informed consent to any additional terms in a tenancy agreement, and providing that an additional term is unenforceable if such consent is not obtained, and
- providing that an additional term which purports to bind a tenant to the rules of an owners corporation is unenforceable if a copy of the owners corporation rules was not provided to the tenant.<sup>39</sup>

<sup>36</sup> Real Estate Institute of Victoria submission to Laying the Groundwork, page 10. A copy of the New South Wales prescribed tenancy agreement can be accessed at [http://www.fairtrading.nsw.gov.au/About\\_us/Our\\_services/Forms.html#Residential\\_tenancy\\_forms](http://www.fairtrading.nsw.gov.au/About_us/Our_services/Forms.html#Residential_tenancy_forms).

<sup>37</sup> Victorian Civil and Administrative Tribunal submission to Laying the Groundwork, page 3.

<sup>38</sup> Tenants Union of Victoria submission to Laying the Groundwork, pages 22-23.

<sup>39</sup> Ibid, pages 23 and 26, and stakeholder feedback raised with CAV through its day to day operations.

**Questions**

- 19 What are the advantages and disadvantages of the current prescribed tenancy agreement, compared with a more comprehensive agreement?
- 20 What arrangements should apply in respect of the inclusion and enforcement of additional contractual provisions that go beyond the prescribed agreement and statutory duties?

### 4.1.3 Pets in rented premises

Many Victorians place great value in being able to keep household pets, for companionship and related wellbeing reasons. However, some landlords are reluctant to allow pets in their properties, out of concern they may damage the premises or disturb neighbours.

A common issue that arises in tenancies is uncertainty around the parties' obligations relating to keeping pets in rented premises. While the Act does not directly address the issue of pets in rented premises, if the keeping of a pet causes a tenant to breach a statutory duty, the landlord can issue a breach of duty notice. Alternatively, if a landlord can show that a tenant's pet has endangered the safety of neighbours, the landlord may give the tenant an immediate notice to vacate.

It is also possible for a landlord to include an additional term in a tenancy agreement prohibiting pets, which a prospective tenant could accept or attempt to negotiate. Many agents insert 'no pets' clauses as a standard additional term in their tenancy agreements, and there is a general perception that many agents are anti-pets, viewing them as an undesirable source of potential conflict in a tenancy. Some tenants keep pets despite having a 'no pets' clause in their tenancy agreement, either because they did not disclose their pet or because they got a pet after the tenancy had commenced.

If a tenant breaches a 'no pets' clause, the recourse available to a landlord seeking to enforce the clause is unclear. The landlord could make a general dispute application to VCAT seeking an order that the pet be removed; in many cases the application may only be successful if the landlord can prove that the pet was causing the tenant to breach a statutory duty. As noted above, a landlord cannot serve a breach of duty notice for a purely contractual breach.

Given the value many people place on being able to keep pets in their household, some tenants question the extent to which it is reasonable for landlords to ban pets, particularly in circumstances where the animal is contained (for example a reptile, fish or bird). Conversely, some landlords are frustrated at the difficulties in enforcing a 'no pets' clause, particularly when tenants keep pets that can cause significant damage to premises that may require fumigation, new carpets or other costs which exceed the bond.

Other jurisdictions address the issue of pets in tenancies by allowing an additional bond, or a specific enforceable term in the tenancy agreement:

- In Western Australia, a landlord can charge an additional amount of bond (known as a 'pet bond') if the tenant is permitted to keep pets capable of carrying parasites which can affect humans, to cover the cost of fumigation of the premises that may be required after the tenancy.<sup>40</sup>
- In New South Wales, the prescribed tenancy agreement includes optional terms relating to pets. The optional terms provide for the tenant to agree not to keep animals on the premises without the landlord's consent, for the landlord to consent to any specified animals, and for the tenant to

<sup>40</sup> Residential Tenancies Act 1987 (WA), section 29.

agree to have the carpet professionally cleaned or to have the premises fumigated if the cleaning or fumigation is required because animals have been kept on the premises during the tenancy.<sup>41</sup>

Submissions received to date have contended, variously, that:

- tenants should be required to declare a pet at the start of a tenancy or during a tenancy<sup>42</sup>
- tenants should have the right to keep pets, provided landlords are notified (in the case of a free-roaming pet), and that landlords should only be able to restrict that right by applying to VCAT<sup>43</sup>
- landlords should be permitted to charge an additional 'pet bond'<sup>44</sup>
- non-compliance with a 'no pets' clause should be grounds for serving a breach notice,<sup>45</sup> and
- the Act should include greater detail on pets and compensation for the damage caused by pets.<sup>46</sup>

Whereas the commentary above relates to pets in general rented premises, the Act does prohibit the keeping of pets in rooming houses without the consent of the rooming house owner. The Act also states that owners of caravan parks and residential parks can make rules relating to the keeping of pets (residents must comply with the rules, but can challenge a rule at VCAT if it is unreasonable). These provisions recognise the more communal nature of residence in these other forms of tenure, where residents live in close proximity to one another and share facilities/common areas.

#### Questions

21 What is the right balance between the interests of tenants and landlords in respect of pets in rented premises? What reforms, if any, are required to current arrangements?

## 4.2 Entry to premises

The entry to premises provisions in the Act aim to balance the right of tenants to have quiet enjoyment of their residence with the need of landlords to access to the property they own where there is a legitimate reason for doing so.

The landlord has a right to enter the premises either:

- by agreement, at any time agreed with the tenant, or
- by notice, provided the landlord gives the tenant at least 24 hours' written notice stating the purpose for entry, and enters between 8am and 6pm (not on a public holiday). When a landlord is exercising a valid right of entry, the tenant has a duty to permit them entry.

The landlord may exercise a right of entry for the following purposes:

<sup>41</sup> Residential Tenancies Regulation 2010 (NSW) Schedule 1 Standard Form Agreement, clauses 43-45.

<sup>42</sup> See submissions to Laying the Groundwork from Council of Homeless Persons (page 6); Tenants Union of Victoria (page 66).

<sup>43</sup> Little Real Estate submission to Laying the Groundwork, page 1.

<sup>44</sup> Real Estate Institute of Victoria submission to Laying the Groundwork, page 5.

<sup>45</sup> Stakeholder feedback raised with CAV through its day to day operations.

<sup>46</sup> Little Real Estate submission to Laying the Groundwork, page 1.

**Table 3: Purposes for exercising a right of entry**

Prospective tenants	To show prospective tenants the premises (entry can only be within 14 days of the lease termination date, and after a notice to vacate or notice of intention to vacate has been given)
Prospective buyers / lenders	To show the premises to prospective buyers or lenders, where premises are to be sold or used as security for a loan
Landlord's duty	To enable the landlord to carry out a duty under the Act, the tenancy agreement or other laws (e.g. to maintain the premises in good repair)
Valuation	For valuation purposes
Tenant non-compliance	The landlord or landlord's agent has reasonable grounds to believe that the tenant has failed to comply with their duties under the Act or the tenancy agreement
General inspection	To conduct one general inspection of the premises once in any six-month period (but not within the first three months of the first tenancy agreement)
Family violence application	To conduct an inspection for the purposes of legal proceedings in relation to a VCAT application made under the Act's family violence provisions

A person exercising a right of entry for any of the above purposes must do so reasonably, and must not stay or let others stay longer than is necessary, unless it is with the tenant's consent. The tenant also has the right to apply to VCAT for a compensation order if any damage is caused by the landlord, landlord's agent or a person accompanying them during any entry.

Landlord access to rental premises was highlighted as a priority for review in the Government's *Plan for Fairer, Safer Housing*.<sup>47</sup> Stakeholders have raised concerns about the adequacy of the landlord providing 24 hours' written notice for any of the reasons for entry, and proposed longer notice timeframes for various reasons for entry (in particular entry to conduct a general inspection).<sup>48</sup> It was also suggested that the frequency of general inspections be reduced, and that landlords should have to provide detailed reasons for entering as well as the specific time of the proposed entry.<sup>49</sup>

Where the reason for entry does not allege any non-compliance on the part of the tenant, stakeholders have contended that there should be a mechanism in the Act requiring landlords to negotiate entry times that suit the tenant.<sup>50</sup> Concerns were also raised about landlords conducting certain types of inspections without agreement or notice, either by attending the address without entering the building, or by remotely monitoring and photographing the premises through the use of technology such as unmanned aerial vehicles, or other surveillance devices.<sup>51</sup>

Stakeholders also questioned whether the tenant's right to seek compensation at VCAT for any damage caused during an entry should be expanded to encompass compensation for loss caused by theft which may occur when a right of entry is being exercised.<sup>52</sup>

<sup>47</sup> *Labor's Plan for fairer, safer housing*, 26 November 2014.

<sup>48</sup> See submissions to *Laying the Groundwork* from Housing for the Aged Action Group (page 11); Tenants Union of Victoria (page 62).

<sup>49</sup> See submissions to *Laying the Groundwork* from Housing for the Aged Action Group (page 11); Tenants Union of Victoria (page 63).

<sup>50</sup> *Housing for the Aged Action Group* submissions to *Laying the Groundwork*, page 11.

<sup>51</sup> Victorian Council of Social Service submission to *Laying the Groundwork*, page 16 and stakeholder feedback raised with CAV through its day to day operations.

<sup>52</sup> Tenants Union of Victoria submission to *Laying the Groundwork*, page 63.

With respect to the right of entry to show the premises to prospective tenants, it was suggested that allowing entry only within 14 days of the current lease termination date is insufficient, and that the timeframe should be extended.<sup>53</sup>

Finally, stakeholders sought clarification of landlords' responsibilities in assisting police with their inquiries, including the circumstances in which landlords would have the right to enter premises to provide access to police, without the knowledge of the tenant.<sup>54</sup>

#### Questions

22 What entry to premises arrangements strike the right balance between the rights of tenants to quiet enjoyment and the rights of landlords to enter premises and what, if any, reforms are required?

### 4.2.1 Entry to premises where premises are to be sold

Exercising rights of entry can be contentious, particularly when conducting open house inspections and taking photographs for the purpose of advertising the premises while a tenancy is still on foot. Over the course of a sales campaign, agents may arrange for frequent open house inspections and one-on-one inspections, which can impact on the tenant's quiet enjoyment of the premises. Avoiding unnecessary entries can be difficult when the selling agent differs from the rental agent, and when entry is sought for reasons relating to the sale but prospective buyers are not present.

The Act does not directly address how frequently a landlord can enter to show the premises to prospective buyers. Landlords or agents sometimes take images (photographs or video recordings) of the premises while exercising a right of entry. It is generally accepted as reasonable for a landlord to take images for the purpose of recording the condition of the premises, so that the landlord can ensure the property is maintained in good repair and that the tenant is keeping it reasonably clean. However, concerns have been raised where a landlord or agent takes images for the purposes of advertising the property for sale (or for re-letting), and images which depict the tenant's possessions are subsequently published.

Under a broad reading of the Act, entering premises to take advertising images falls within the scope of, or is sufficiently incidental to, the rights to enter to show the premises to a prospective purchaser or tenant; however, legal opinion on the issue is divided. The Victorian Law Reform Commission (VLRC) recently considered this issue, tabling its final report in Parliament in May 2015.

In its recommendations, the VLRC proposed that an express right be given to landlords to take and use advertising images, coupled with safeguards such as giving tenants the power to prevent images being taken, by the tenant objecting in writing in circumstances where an image would show a possession that directly identifies the tenant or another occupant, and where it would be unreasonable to expect the tenant to remove or conceal the possession. Further detail on the recommendations made by the VLRC in its report can be accessed at <http://www.lawreform.vic.gov.au/all-projects/ptp>.

<sup>53</sup> See also Real Estate Institute of Victoria submission to Laying the Groundwork, page 6.

<sup>54</sup> See submissions to Laying the Groundwork from Community Housing Federation of Victoria (page 5); Victorian Council of Social Service (page 16).

Stakeholder views on the matter include the following:

- where a landlord takes images of premises, they should be required to notify the tenant in advance how they will be used, and the tenant should have the right to seek an injunction where they believe it would be unreasonable or would endanger their safety or privacy<sup>55</sup>
- the Act should adopt the approach favoured in Queensland's residential tenancies legislation and expressly prohibit the use of images that show a tenant's possessions, and open house inspections or on-site auctions, unless the written consent of the tenant is obtained,<sup>56</sup> and
- the Act should limit the number of open house and closed house inspections for prospective buyers, and provide for the tenant to be compensated (for example, in the form of a rent reduction) if their quiet enjoyment is significantly disrupted.<sup>57</sup>

#### Questions

23 What other issues and factors arise from current arrangements for entering a property that is to be re-let or sold and what, if any, reforms are required?

### 4.3 Sub-letting, assignment and the sharing economy

The Act recognises the landlord's right to determine who is given exclusive use and enjoyment of their property under a head lease, and requires tenants to seek permission before similar access is given to others, whether through sub-letting or assigning the tenancy agreement:

- Sub-letting occurs where one or more existing tenants rents out part or all of the property to other people. The tenants who signed the initial tenancy agreement are the 'head tenants' and those tenants renting from them are the 'sub-tenants'. Sub-letting is different to a co-tenancy, where every tenant signs the tenancy agreement and all names appear on the bond lodgement form.
- Assignment occurs where a tenant's interest in the tenancy is transferred to another person so that the other person becomes the tenant in their place. Residents in rooming houses cannot assign their rights.

The Act provides that a tenant must not sub-let or assign without the landlord's written consent, and a sub-letting or assignment without the landlord's consent is invalid and a reason for the landlord to issue a notice to vacate.

However, the landlord must not unreasonably withhold consent and a tenant can apply to VCAT seeking an order that the premises can be sub-let or assigned if they believe the landlord is withholding consent unreasonably. If the landlord is the Director of Housing, it is not unreasonable to withhold consent to the sub-letting or assignment for the reason that it would disadvantage people on a public housing waiting list.

A landlord is prohibited under the Act from charging a fee in exchange for consenting to an assignment or sub-letting. However, in the case of an assignment a landlord can require the tenant to pay a fee to cover any costs of preparing documents to give effect to a written assignment.

<sup>55</sup> Housing for the Aged Action Group submission to Laying the Groundwork, page 11.

<sup>56</sup> Tenants Union of Victoria submission to Laying the Groundwork, pages 32-33.

<sup>57</sup> Stakeholder feedback raised with CAV through its day to day operations.

### 4.3.1 Issues with sub-letting

Submissions have noted the growing practice of tenants listing all or part of their rented premises as short term accommodation. There is confusion about whether or not this practice constitutes sub-letting under the tenancy agreement. In addition to concerns regarding the inability to vet people staying in the property, the landlord may also have concerns about increased wear and tear, keys to the premises being shared with unknown people and the premises being advertised to the public.

If the practice involves sub-letting, the landlord's written consent is required, and the landlord would be entitled to issue a notice to vacate to the tenant if consent has not been obtained. Stakeholders have sought legislative clarification regarding these types of arrangements.<sup>58</sup>

Stakeholders have also raised concerns about the way the sub-letting provisions of the Act can be used to the detriment of tenant communities such as Aboriginal tenants, where there is a strong cultural expectation that members of the community will support each other, as well as evidence of a high degree of transience.<sup>59</sup>

### 4.3.2 Issues with assignments

With respect to the assignment of leases, stakeholders have noted that obtaining consent is time-sensitive to enable existing tenants to transition to their new arrangements at minimal cost – but that landlords and agents often do not respond promptly to a request for such consent. While the Act provides recourse to VCAT if the tenant believes the landlord is withholding consent unreasonably, in practice tenants may be reluctant to follow this process, and instead seek 'workarounds'.<sup>60</sup>

It has been suggested that the Act should prescribe an assignment form and that, rather than requiring the tenant to obtain the landlord's consent, an assignment should be deemed to be in effect seven days after the prescribed assignment form has been served on the landlord, and that the landlord can only object to the assignment by applying to VCAT within the seven day notice period.<sup>61</sup>

Concerns have also been raised about the fee landlords can charge to cover the costs they incurred to prepare a written assignment, and whether some agents charge fees that are excessive or unreasonable. Stakeholders have advocated for a fixed fee, fee cap or requirement that the fee be reasonable, and have queried whether the Act should specify whether the outgoing or incoming tenant should be liable for the fee.<sup>62</sup>

#### Questions

24 Does the Act require amendment to accommodate the growth of short term accommodation platforms? If so, what amendments should be considered?

25 What other reforms, if any, are required to balance the interests of landlords and tenants in respect of sub-letting and lease assignments?

<sup>58</sup> Little Real Estate submission to Laying the Groundwork, page 1.

<sup>59</sup> Victorian Aboriginal Legal Service submission to Laying the Groundwork, pages 3-4.

<sup>60</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 33.

<sup>61</sup> Ibid, page 34.

<sup>62</sup> Stakeholder feedback raised with CAV through its day to day operations, and submissions to Laying the Groundwork from Little Real Estate (page 1); Tenants Union of Victoria (page 33).

## 4.4 Violence in managed premises

The Act contains provisions for addressing violence that occurs on-site in managed high density buildings, rooming houses, caravan parks and residential parks. If a resident or their visitor acts violently or puts anyone in danger, the on-site manager can issue a notice to leave. Issuing a notice to leave suspends the residency and the resident and/or visitor must leave the premises immediately and not return for two days.

If a resident or their visitor causes malicious damage to the premises or common areas, or endangers the safety of neighbours, the on-site manager has the option of issuing them with an immediate notice to vacate, terminating the tenancy. Notices to vacate are discussed in more detail in section 5.1.

### Questions

26 What issues arise in practice for residents and on-site managers in relation to the use of notices to leave because of violence in managed premises, and should any amendments to current arrangements be considered?

## 5 At the end of a tenancy

An important feature of many agreements is that they provide for what happens when a party to that agreement wants the agreement to end, or the agreement has to end for other reasons.

The important dual role that rented premises have, both as the tenant's home and the landlord's property and source of rental income, means that there is a need to ensure the Act provides clear rules for situations where either party wants the tenancy agreement to end, and for situations where one party's conduct or circumstances outside of either party's control precipitate the end of the tenancy. For example, the Act regulates the ways a tenancy agreement can be terminated, and the processes landlords must follow when dealing with any goods left behind by tenants at the end of a tenancy. It also provides for tenancy arrangements to be changed in circumstances where family violence has occurred.

### 5.1 Terminations

A tenancy agreement can only be ended in the manner set out in the Act.

If a fixed term tenancy ends and the tenant continues to occupy the premises, the tenancy agreement rolls over and becomes a periodic ('month-to-month') tenancy agreement.

Unless all parties agree to end the tenancy (termination by agreement), a tenancy agreement is most commonly terminated by:

- the landlord giving the tenant a notice to vacate, or
- the tenant giving the landlord a notice of intention to vacate.

The Act also sets out other ways a tenancy can terminate other than by agreement or by notice. These other methods include:

- termination by consent
- abandonment
- merger
- disclaimer
- by a tenant before possession
- by a landlord before possession, and
- termination after the death of a sole tenant.

#### 5.1.1 Termination by landlord

The reasons a landlord can give a notice to vacate, and the minimum notice period that must be provided to the tenant for that reason, are set out in Appendix 2:

- the reasons indicated in column A of the table can be used to terminate a tenancy before the end of a fixed term arrangement, or under a periodic arrangement. Most of these reasons relate to some form of breach or wrongdoing by the tenant
- the reasons in column B of the table can be used to terminate a tenancy, but not until after the end of a fixed term agreement, or under a periodic arrangement. These reasons relate exclusively to changes in the landlord's circumstances

If a landlord gives a notice to vacate for no specified reason or to end a fixed-term tenancy, but does so in retaliation for the tenant exercising their legal rights or saying they will exercise their legal rights, the notice to vacate is invalid and cannot be enforced (the 'retaliation defence').

If a mortgagee becomes entitled to possession of, or to exercise a power of sale in respect of, rented premises, and the mortgage was entered into before the tenancy agreement, the mortgagee may issue the tenant with a 28-day notice to vacate, even if it is before the end of any fixed term arrangement.

### 5.1.2 Termination by tenant

The reasons for which a tenant can give a notice of intention to vacate, and the minimum notice period that must be provided to the landlord for that reason, are set out in Appendix 3. As for landlords, some of these reasons can be used to terminate an agreement before the end of any fixed term, and others apply to agreements after the end of a fixed term.

Tenants can serve a reduced (14 day) notice of intention to vacate if they are offered public housing by the Director of Housing. Given the increasing role of community housing providers in supplying social housing, stakeholders have proposed that tenants should also be able to serve the 14 day notice if they are offered housing by other social housing providers.<sup>63</sup>

#### Questions

27 What are your views on the stakeholder 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?

### 5.1.3 Notices to vacate

A key concern that has been raised by stakeholders in relation to terminations by notice is the use by landlords of notices to vacate for 'no specified reason', which can create uncertainty and stress for tenants, and can deter them from exercising their tenancy rights. Several submissions have contended that notices to vacate for no specified reason should be repealed or their notice periods should be significantly extended, to discourage frequent use.<sup>64</sup>

The issues paper on security of tenure noted opposing arguments about notices to vacate for no specified reason that highlighted potentially adverse consequences for security of tenure. For example, landlords may choose to avoid periodic agreements and offer only short term fixed term agreements in an attempt to manage risks associated with a tenancy, or to retain flexibility to regain possession of the premises.<sup>65</sup> This issues paper does not seek further comment on this issue, but focuses on other terminations.

The majority of feedback from stakeholders about these terminations by notice relates to notices to vacate issued by a landlord and measures for mitigating any adverse impacts on tenants:

<sup>63</sup> See submissions to Laying the Groundwork from Baptcare (page 1); Eastern Community Legal Centre (page 18).

<sup>64</sup> See submissions to Laying the Groundwork from Barwon Community Legal Service (page 2); Council to Homeless Persons (page 5); Eastern Community Legal Centre (page 18); Housing for the Aged Action Group (page 7); Justice Connect Homeless Law (page 16); Melbourne City Mission (page 4); Peninsula Community Legal Centre (page 3); The Salvation Army (page 2); Tenants Union of Victoria (pages 39 and 42-43); Victoria Legal Aid (pages 11-12); Western Community Legal Centre (pages 17-19).

<sup>65</sup> Fairer Safer Housing issues paper *Security of Tenure*, page 17.

- many of the notice periods are considered insufficient in practice for allowing tenants to find a new place to live – in particular, tenants should be afforded longer notice periods if they are in long-term tenancies, or where they have not breached the tenancy agreement or Act<sup>66</sup>
- where a landlord issues a notice to vacate for reasons relating to alleged wrongdoing by a tenant, the notice to vacate should be subject to reasonable opportunities for the tenant to remedy the breach, provided the breach is not serious<sup>67</sup>
- if a landlord gives a notice to vacate to end a fixed term tenancy or for a reason marked \* in Appendix 2, and the tenant counters it by giving a 14 day notice of intention to vacate, the termination date on the 14 day notice should be able to come before the end of any fixed term of the tenancy agreement<sup>68</sup>
- the immediate notice to vacate that a landlord can issue where a tenant or tenant’s visitor endangers the safety of neighbours should be expanded to include circumstances where the tenant or tenant’s visitor endangers the safety of the landlord or their agent, employee or contractor<sup>69</sup>
- penalties should be introduced for landlords who issue a notice to vacate without valid grounds, or issue a notice to vacate that is not in the prescribed form<sup>70</sup>
- tenants should be able to claim compensation for the cost of defending invalid notices to vacate in order to deter misuse of notice powers<sup>71</sup>
- to address concerns about misuse of termination powers, landlords should be prohibited from reletting their premises for 24 months instead of six months after issuing a notice to vacate for one of the reasons marked † in the table in Appendix 2 (for example, because the landlord intends to use the premises for a business instead of a residence)<sup>72</sup>
- landlords should also have to better substantiate their reasons for issuing a notice to vacate, for example having to attach a copy of any permit required for a demolition or renovation, or a copy of a statutory declaration from the family member the landlord proposes to have reside in the premises<sup>73</sup>
- the ‘retaliation defence’ should apply to all notices to vacate (not just to notices to vacate for no specified reason or to end a fixed-term tenancy), a prohibition on issuing further notices to vacate for an extended period of time should apply if a notice was found to be retaliatory, and it should be an offence for a landlord to issue a notice to vacate in retaliation,<sup>74</sup> and
- the landlord’s foreclosure should not be reasonable grounds for evicting a tenant, at least before the end of an existing fixed term agreement (it has also been suggested that landlords should have to disclose details of any mortgage to the tenant at the start of a tenancy, given that the tenant can be adversely affected if the landlord defaults on the mortgage).<sup>75</sup>

<sup>66</sup> Launch Housing submission to Laying the Groundwork, pages 4-5 and The Salvation Army submission to Laying the Groundwork, page 2.

<sup>67</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 39.

<sup>68</sup> See submissions to Laying the Groundwork from Barwon Community Legal Service (page 5); Eastern Community Legal Centre (page 17); Tenants Union of Victoria submission (pages 37-38); Victorian Council of Social Service (page 9).

<sup>69</sup> See submissions to Laying the Groundwork from Community Housing Federation of Victoria (pages 4-5); Real Estate Institute of Victoria (page 5).

<sup>70</sup> Stakeholder feedback raised with CAV through its day to day operations.

<sup>71</sup> Ibid.

<sup>72</sup> Housing for the Aged Action Group submission to Laying the Groundwork, page 7.

<sup>73</sup> Tenants Union of Victoria submission to Laying the Groundwork, pages 39-42.

<sup>74</sup> See submissions to Laying the Groundwork from Barwon Community Legal Service (page 2); Eastern Community Legal Centre (pages 19-20); Tenants Union of Victoria (page 43); Western Community Legal Centre (pages 19 and 21).

<sup>75</sup> See submissions to Laying the Groundwork from Victorian Council of Social Service (page 9); Victorian Civil and Administrative Tribunal (page 3).

More broadly, concerns have been raised by stakeholders that the policy rationale for terminations by notice upholds the landlord's discretion, particularly insofar as they are empowered to issue notices for tenant wrongdoing. In contrast, tenants may only issue a breach of duty notice for equivalent behaviour by a landlord. It has been suggested that the Act should allow for some instances where bad behaviour by a landlord triggers a notice of intention to vacate from the tenant, rather than a breach of duty notice.<sup>76</sup>

Finally, stakeholders have questioned the term 'notice to vacate', alleging it is misleading as tenants may interpret these notices as a final request to leave, rather than the initial step in an eviction. It has been suggested that an alternative term such as 'request to vacate' or 'notice of intention to end tenancy agreement' be used in the Act instead.<sup>77</sup>

#### Questions

28 For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?

29 For what reasons should a tenant be permitted to end a tenancy, and what notice periods should a landlord be given?

30 What remedies or defences should be available to a tenant to prevent bad faith by a landlord who is attempting to end a tenancy?

#### 5.1.4 Lease breaking

If a tenant does not give notice of an intention to vacate, or wants to end a tenancy agreement earlier than the required notice period (or before the end of the agreement), they are deemed to break the lease and, if the landlord consequently incurs financial loss, may be liable to a compensation order by VCAT covering:

- rent until the end of the lease, or until the property is re-let (whichever comes first)
- reasonable costs of re-advertising the premises
- re-letting fees, usually calculated on a pro-rata basis and detailed in the lease agreement, or in information provided at the start of a tenancy.

A tenant who believes they have been charged an excessive lease-breaking fee and is unable to resolve the issue with their landlord can apply to VCAT for a determination. Stakeholders have suggested that the Act should explicitly state that lease break costs be payable pro rata, and that unfounded claims that do not reflect the landlord's actual loss should attract a penalty to discourage future similar behaviour.<sup>78</sup>

It has also been suggested that the tenant should only be liable for reasonable fees and charges associated with the cost of advertising and reletting the premises, and only if the fees and charges are actually paid by the landlord.<sup>79</sup> Alternatively, the Act should adopt the approach to compensation in the New South Wales, allowing an optional break fee clause in the additional terms of the tenancy agreement, where the break fee is a fixed penalty that the tenant agrees to pay if they move out before the end of the fixed term (regardless of whether the agent finds a replacement tenant quickly).<sup>80</sup> If the fixed term of the agreement is for 3 years or less, the break fee is:

<sup>76</sup> The Salvation Army submission to Laying the Groundwork, page 3.

<sup>77</sup> Justice Connect Homeless Law submission to Laying the Groundwork, pages 26-27.

<sup>78</sup> Barwon Community Legal Service submission to Laying the Groundwork, page 6.

<sup>79</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 38.

<sup>80</sup> Real Estate Institute of Victoria submission to Laying the Groundwork, page 7. See *Residential Tenancies Act 2010* (NSW), section 107(4).

- 6 weeks rent if the tenant moves out in the first half of the fixed term, and
- 4 weeks rent if the tenant moves out in the second half of the fixed term.

In cases of severe hardship, VCAT may also end a fixed-term tenancy early. VCAT can end the tenancy if the severe hardship the tenant would experience (were the tenancy to continue) would be greater than any hardship the landlord would suffer if the tenancy were to end early. VCAT may make decisions about any compensation that may need to be paid to the landlord and tenants need to provide evidence of the hardship, such as bank statements, income statements or proof of medical condition. Concerns have been raised that, while this section is intended to protect tenants, it does not operate this way in practice because an application to reduce a fixed term tenancy due to severe hardship may be dismissed at VCAT if the tenant has already vacated the premises and returned the keys, on the basis that the tenancy has already been terminated.<sup>81</sup> As a result, the tenant is liable for lease break costs.

Submissions have also suggested that compensation to the landlord should be strictly capped in cases where VCAT recognises severe hardship, or waived in circumstances such as family violence, or where due to accident or health condition the tenant can no longer occupy the premises.<sup>82</sup>

#### Questions

- 31 What are the appropriate approaches to compensate a landlord where a tenant breaks a lease?
- 32 What, if any, additional protections should be provided to a tenant who breaks a lease or wishes to end a lease early due to circumstances such as financial hardship, family violence or illness?

## 5.2 Goods left behind

The Act sets out the procedures landlords must follow when dealing with goods that may be left behind by a tenant in rented premises at the end of a tenancy.

While the landlord can immediately dispose of perishable foodstuffs, dangerous goods, and goods of no monetary value, different rules apply to personal documents and goods of monetary value.

### 5.2.1 Personal documents

When personal documents are left behind, the landlord must take reasonable care of them for at least 90 days and allow the former tenant to reclaim them if they pay the landlord's reasonable removal and storage costs. 'Personal documents' are defined as official documents, photographs, correspondence, or any other document which it would be reasonable to expect that a person would want to keep.

If the personal documents have not been reclaimed after 90 days, the landlord can dispose of the documents, but must comply with legislation which prohibits the destruction of certain documents (such as passports). The landlord can also apply to VCAT for compensation for the removal, storage and notification costs.

<sup>81</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 64.

<sup>82</sup> See submissions to Laying the Groundwork from Tenants Union of Victoria (page 38); VincentCare Victoria (page 15).

### 5.2.2 Goods of monetary value

If goods of monetary value have been left behind, the landlord may remove and dispose of those goods if the *total* estimated cost of the removal, storage and sale of all those goods combined is greater than the combined monetary value of all of those goods.

Landlords can assess whether goods can be disposed of or must be stored, or they can apply to CAV to inspect the goods and make a formal assessment as to whether they can be disposed of or must be stored.

For goods that cannot be disposed of, the landlord must:

- store the goods in a safe place for 28 days
- notify the former tenant within seven days (by sending a notice to their forwarding address or, if not known, by publishing a notice in the newspaper), and
- allow the former tenant to reclaim the goods if they pay the landlord's reasonable costs incurred for removal, storage, notification and auction of the goods.

If the goods have not been reclaimed after 28 days, the landlord must arrange for the goods to be sold by public auction as soon as practicable. The landlord must advertise the auction in the newspaper at least 14 days before the auction.

### 5.2.3 Issues with goods left behind

Concerns have been raised that the current procedures landlords have to follow for goods left behind at the end of a tenancy are cumbersome and confusing, particularly when compared to the procedures for uncollected goods held by traders in Part 4.2 of the *Australian Consumer Law and Fair Trading Act 2012* (which also applies to residents of caravan parks who hold long term holiday site agreements).<sup>83</sup>

Stakeholder feedback accumulated by CAV indicates uncertainty as to whether objects such as mobile phones meet the definition of 'personal documents': the definition has been read broadly, in line with evidence legislation, and has been understood to include still and video cameras, computer hard drives, CDs, DVDs and external storage devices such as flash drives. Uncertainty has also been reported where a car is left behind and it is unclear whether the departed tenant is its owner.

Specific concerns have also been raised with respect to the test whereby the landlord may remove and dispose of goods of monetary value if the total estimated cost of the removal, storage and sale of all those goods combined is greater than the total monetary value of all those goods combined. In some instances, it has been argued, applying the test has resulted in some goods of high value being disposed of as the value of storing *all* the goods left behind exceeded the value of the higher value goods. One alternative could be to change the test to provide that goods of monetary value must be stored if the value of *all or part* of the goods left behind exceeds the cost of removal and storage of those goods.<sup>84</sup>

The current test, however, was itself amended in 1997 from an earlier test which required the value of each item to be individually assessed. As noted in the Second Reading Speech for the Bill that introduced the 1997 legislation:

*'The bill resolves difficulties currently experienced in determining whether goods left behind by a tenant after termination of a tenancy should be stored. The existing provisions had been interpreted to require an assessment of the relative value and storage cost of each good of value left behind. Consultation revealed that this often resulted in tenants' household furniture being destroyed, as each item was of little value. This provision now requires consideration of the combined value of all goods left behind and the total removal,*

<sup>83</sup> Victorian Caravan Parks Association submission to Laying the Groundwork, page 4.

<sup>84</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 44.

*storage and sale cost of such goods. The new provisions will protect all of a tenant's goods up to a combined value of those goods.'*<sup>85</sup>

CAV has also received stakeholder feedback about the difficulty of assessing the 'monetary value' of goods, how depreciation should be taken into account, and whether references to sale at public auction continue to be appropriate, given the declining frequency of public auctions and the increasing practice of selling items through online platforms such as eBay and Gumtree. The potential redundancy of the requirement to publish notices of goods left behind and notices of auction in a newspaper has also been highlighted.

#### **Questions**

33 What arrangements should apply to goods that a tenant leaves behind at the end of a tenancy?

34 Are there any issues in relation to other rights and responsibilities that occur before, during, or at the end of a tenancy not discussed in this paper that should be considered in this Review?

## **5.3 Tenancies and family violence**

The Act sets out procedures that tenants affected by family violence can follow if they wish – or need – to change their tenancy arrangements. While these typically relate to the end of a tenancy or creation of a new tenancy, the family violence provisions can also be relevant during a tenancy, for example if locks need to be changed.

The procedures apply if an intervention order has been made under the *Family Violence Protection Act 2008* or the *Personal Safety Intervention Orders Act 2010* that excludes a tenant from rented premises ('the excluded person') and protects another person who has been residing at the property ('the protected person'), whether or not the protected person's name is on the lease.

The Royal Commission into Family Violence (The Commission) currently underway in Victoria will inquire into and provide practical recommendations on how the Victorian Government's response to family violence can be improved.

The Commission is due to provide its report and recommendations to the Governor of Victoria by Monday, 29 March 2016. The Commission's recommendations will inform consideration of issues surrounding tenancies and family violence in this Review.

### **5.3.1 Creation of a new tenancy agreement**

If the protected person wishes to stay in the property and the intervention order is a final order (rather than an interim order), the protected person can apply to VCAT to create a new tenancy agreement. VCAT can order that the existing tenancy agreement (that lists the excluded person as a tenant) be terminated, and require the landlord to enter into a new tenancy agreement with the protected person for the remaining period of the lease based on the same terms, conditions and rent as the existing agreement.

In addition to whether the protected person and any other tenants could reasonably be expected to comply with the new tenancy agreement, VCAT can also consider whether the protected person and any dependent children would be likely to suffer extreme hardship if they had to leave the property, and whether that hardship would outweigh any hardship the landlord would suffer if the order were made.

<sup>85</sup> Hon. R.I. Knowles, Minister for Health, *Hansard*, Residential Tenancies Bill Second Reading Speech (20 November 1997), page 718.

VCAT can also decide who is entitled to any bond held by the RTBA and who must pay for any other liabilities such as unpaid rent, damage caused to the premises and any outstanding utility charges. No party to the terminated tenancy agreement is able to claim compensation for early termination in these circumstances.

### 5.3.2 Early termination of tenancy agreement

If a protected person under an intervention order (either an interim order or final order) wishes to leave the property, they can apply to VCAT to end their fixed term tenancy agreement early on grounds of severe hardship, in order to protect their safety or the safety of their children. VCAT may only make an order reducing the term of the agreement if the severe hardship the protected person would suffer outweighs any hardship the landlord would suffer as a result of terminating the lease. VCAT may determine any compensation to be paid by the applicant to the landlord because of the reduction in the term of the tenancy agreement.

### 5.3.3 Changing locks

The Act also provides for the changing of locks if a person is excluded from the rented premises under an intervention order or family violence safety notice. This allows the protected person to change the locks and prevent the landlord from giving a copy of the new key to the excluded person while the intervention order or safety notice is in force.

### 5.3.4 Issues with tenancies and family violence

Family violence plays a significant role in the breakdown of household living arrangements. As noted by the Commission:

*‘The Australian Institute of Health and Welfare reports that family and domestic violence is the main reason women and children leave their homes in Australia. Approximately a third of all clients who accessed homelessness agencies in 2013-14 sought assistance as a result of experiencing family or domestic violence – this was a 9 per cent increase on 2012-13 (including 14 per cent more children experiencing family or domestic violence), and Victoria accounted for 72 per cent of the increase.’<sup>86</sup>*

Issues raised by stakeholders in submissions to this Review include concerns that the provisions in the Act relating to family violence can only be enacted when an intervention order has been made (some procedures require a final rather than an interim intervention order).<sup>87</sup> They point to legislation in other jurisdictions which permit a tribunal to change tenancy arrangements where an act of family violence has occurred, but an intervention order is not necessarily in place. It has been suggested that VCAT could rely on an affidavit to determine whether family violence has taken place, rather than requiring an intervention order or police report.<sup>88</sup>

Stakeholders have also called for changes to the Act to:

- allow for the apportionment of liability between co-tenants for rental arrears and compensation for damage caused to the premises through family violence, to protect tenants affected by family violence from losing their part of the bond and being left further liable, if the debts and damage were caused by a perpetrator who is or was a co-tenant.<sup>89</sup>

<sup>86</sup> Royal Commission into Family Violence, Issues Paper released 31 March 2015, page 4.

<sup>87</sup> See submissions to Laying the Groundwork from Barwon Community Legal Service (pages 4-5); Western Community Legal Centre (pages 26-27).

<sup>88</sup> Victorian Aboriginal Legal Service submission to Laying the Groundwork, pages 11-12.

<sup>89</sup> See submissions to Laying the Groundwork from Fitzroy Legal Service (pages 15-21); Inner Melbourne Community Legal (page 2); Justice Connect Homeless Law (page 36); Victorian Council of Social Service (page 9); VincentCare Victoria (page 19).

- allow for the termination of a joint tenancy if one co-tenant wishes to leave premises due to family violence, so that the co-tenant leaving is no longer subject to the obligations of a tenant and can get their part of the bond without having to wait until the end of the entire tenancy<sup>90</sup>
- protect tenants affected by family violence from having their personal details listed on a tenancy database, and enabling the removal of an existing listing where the relevant breach or damage occurred in the context of family violence<sup>91</sup>
- provide clarity in the Act about the circumstances in which compensation will be awarded to the landlord where a fixed term tenancy agreement is reduced due to family violence, as uncertainty may be acting as a barrier to affected tenants applying to VCAT for early termination<sup>92</sup>
- protect tenants affected by family violence from eviction where a landlord gives an immediate notice to vacate because of malicious damage caused to the premises by a tenant or tenant's visitor, but the malicious damage was caused by the perpetrator of the family violence<sup>93</sup>
- empower the Magistrates' Court to make decisions relating to tenancy arrangements under the family violence provisions of the Act at the same time as making decisions relating to intervention orders,<sup>94</sup>
- allow a tenant affected by family violence to make an application for early termination of their fixed term tenancy agreement even if the tenant has already abandoned the premises due to safety concerns,<sup>95</sup> and
- in circumstances where locks are changed, require an excluded tenant to return any keys to the premises or common areas to the landlord, and ensure that the owners corporation must not give an excluded tenant a key to any common areas.<sup>96</sup>

It is important to also consider how the interests of the landlord, who is not a party to the family violence, may be impacted. Submissions have suggested the creation of a family violence tenancy fund which could permit compensation to be paid to landlords and tenants affected by family violence.<sup>97</sup>

### Questions

- 35 For tenants experiencing family violence, what changes to the Act will further promote their access to safe and sustainable rental housing?
- 36 How are the interests of the landlord best protected in circumstances where family violence impacts on an existing tenancy?

<sup>90</sup> Stakeholder feedback raised with CAV through its day to day operations.

<sup>91</sup> See submissions to Laying the Groundwork from Justice Connect Homeless Law (pages 37-39); The Salvation Army (page 4); Victorian Council of Social Service (page 9); Western Community Legal Centre (pages 26-27).

<sup>92</sup> Western Community Legal Centre submission to Laying the Groundwork, pages 26-27.

<sup>93</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 16.

<sup>94</sup> See submissions to Laying the Groundwork from Barwon Community Legal Service (page 4); Western Community Legal Centre (page 25).

<sup>95</sup> Western Community Legal Centre submission to Laying the Groundwork, pages 25-27.

<sup>96</sup> Tenants Union of Victoria submission to Laying the Groundwork, page 16.

<sup>97</sup> Fitzroy Legal Service submission to Laying the Groundwork, pages 11-14.

## 6 Conduct of agents

The conduct of agents managing rental properties has also been a focus for stakeholders.<sup>98</sup>

In the rental market, if a property is being managed by an agent, that agent is often the primary (or only) point of contact for the tenant. This can be an ongoing relationship, stretching over years.

The tenant relies on the agent to communicate (and in some instances negotiate) with the landlord about issues the tenant has raised about their rental property. Complaints have been received from tenants citing unprofessional conduct by agents, including pressuring tenants to make properties available for inspection at unreasonable times and advertising rental properties within a price range and encouraging tenant bidding to secure the property. Other complaints include agents failing to pass on information received from tenants to landlords (including requests for repairs) and failing to act within a timeframe considered adequate by the tenant.

The Act places a number of obligations on landlords which agents exercise on their behalf. However, many of the complaints that tenants make about agents are not about behaviour that would constitute a breach of current legislative provisions. In the context of this Review, feedback is sought about the conduct of agents insofar as it relates to their compliance with the provisions of the Act, including fulfilling the obligations of the landlord.

Parallel to the requirements of the Act, legal provisions dealing with the conduct of real estate agents also exist under the *Estate Agents Act 1980*. While the Estate Agents Act is not within the scope of this Review, a separate review of the Estate Agents Act is being conducted by CAV as part of its *Consumer Property Law Review*. The issues paper, *Conduct and institutional arrangements for estate agents, conveyancers and owners corporation managers*, canvasses a range of topics, including the roles and responsibilities of estate agents, conduct in property management and continuing professional development. Feedback on the conduct or role of agents is invited via the *Consumer Property Law Review*, information about which can be accessed at [consumer.vic.gov.au/consumerpropertylawreview](http://consumer.vic.gov.au/consumerpropertylawreview).

### Questions

37 Does the Act need to specifically deal with the conduct of agents acting on behalf of landlords, and if so what reforms would address this conduct?

---

<sup>98</sup> See submissions to Laying the Groundwork from Community Information & Support Victoria (pages 4-5); Eastern Community Legal Centre (pages 13 and 15); Launch Housing (page 5); SouthEast Housing Co-operative (page 8); Tenants Union of Victoria (pages 18-19); Victorian Multicultural Commission (page 18).

## 7 Appendices

### 7.1 APPENDIX 1: PRESCRIBED RESIDENTIAL TENANCY AGREEMENT

#### Residential tenancy agreement

Residential Tenancies Act 1997 Section 26(1)  
Residential Tenancies Regulations 2008 Regulation 7

#### This agreement is made on the day of

Date:	/ /
-------	-----

#### This agreement is between

##### LANDLORD

Name:	
-------	--

Address:	
----------	--

Postcode:	
-----------	--

ACN (if applicable):	
----------------------	--

#### whose agent is (if applicable)

Name:	
-------	--

Business address:	
-------------------	--

Postcode:	
-----------	--

Telephone number:	
-------------------	--

ACN (if applicable):	
----------------------	--

#### and TENANT(S)

Name of TENANT 1:	
-------------------	--

Current address:	
------------------	--

Postcode:	
-----------	--

ACN (if applicable):	
----------------------	--

Name of TENANT 2:	
-------------------	--

Current address:	
------------------	--

Postcode:	
-----------	--

Name of TENANT 3:	
-------------------	--

Current address:	
------------------	--

Postcode:	
-----------	--

Name of TENANT 4:	
-------------------	--

Current address:	
------------------	--

Postcode:	
-----------	--

#### 1. Premises

The landlord lets the premises known as

Address:	
----------	--

Postcode:	
-----------	--

together with those items indicated in the Schedule (strike out if not applicable)

#### 2. Rent

The rent amount is (\$):	
--------------------------	--

Date first rent payment due:	/ /
------------------------------	-----

Pay period

Weekly:	
---------	--

Fortnightly:	
--------------	--

Monthly:	
----------	--

Day of each month (e.g. 15th):	
--------------------------------	--

Place of payment:

--

#### 3. Bond

- The TENANT must pay the bond of \$ amount specified below.
- In accordance with the *Residential Tenancies Act 1997*, the LANDLORD/agent must lodge the bond with the Residential Tenancies Bond Authority (RTBA) within 10 business days after receiving the bond.
- If the TENANT does not receive a bond receipt from the RTBA within 15 business days of handing over the bond money, they should telephone the RTBA on 1300 13 71 64.

Bond amount (\$):	
Date bond payment due:	/ /

If there is more than one TENANT and they do not contribute equally to the total bond, the amounts they each contribute must be listed here. This list is for reference only and will not be recognised by the RTBA.

Name of TENANT	Bond amount (\$)

**4. Period**

Fixed period:	
---------------	--

The period of the agreement commences on:	/ /
and ends on:	/ /

unless the agreement terminates in accordance with the *Residential Tenancies Act 1997*, the agreement will continue as a periodic tenancy.

<b>OR</b> Periodic:	
---------------------	--

The agreement will commence on:	/ /
---------------------------------	-----

and continue until terminated in accordance with the *Residential Tenancies Act 1997*.

**5. Condition of the premises**

The LANDLORD must:

- (a) ensure that the premises are maintained in good repair, and
- (b) If the LANDLORD owns or controls the common areas, take reasonable steps to ensure that the common areas are maintained in good repair.

**6. Damage to the premises**

- (a) The TENANT must ensure that care is taken to avoid damaging the rented premises.
- (b) The TENANT must take reasonable care to avoid damaging the premises and any common areas.
- (c) The TENANT who becomes aware of damage to the rented premises must give notice to the LANDLORD of any damage to the premises as soon as practicable.

**7. Cleanliness of the premises**

- (a) The LANDLORD must ensure that the premises are in a reasonably clean condition on the day on which it is agreed that the TENANT is to enter into occupation of the premises.
- (b) The TENANT must keep the premises in a reasonably clean condition during the period of agreement.

**8. Use of premises**

- (a) The TENANT must not use or allow the premises to be used for any illegal purpose.
- (b) The TENANT must not use or allow the premises to be used in such a manner as to cause a nuisance or cause an interference with the reasonable peace, comfort or privacy of any occupier of neighbouring premises.

**9. Quiet enjoyment**

The LANDLORD must take all reasonable steps to ensure that the TENANT has quiet enjoyment of the premises.

**10. Assignment or sub-letting**

- (a) The TENANT must not assign or sub-let the whole or any part of the premises without the written consent of the LANDLORD. The LANDLORD’s consent must not be unreasonably withheld.
- (b) The LANDLORD must not demand or receive any fee or payment for the consent, except in respect of any fees, costs or charges incurred by the LANDLORD in relation to the preparation of a written assignment of the agreement.

**11. Residential Tenancies Act 1997**

- (a) Each party must comply with the Residential Tenancies Act 1997.
- (b) For further rights and duties refer to the *Residential Tenancies Act 1997*.

**Schedule: A. Items let with the premises (if any); B. Additional terms (if any)**

This section lists any additional items and terms to this agreement. **The terms listed cannot take away any of the rights and duties included in the Residential Tenancies Act 1997.** If you need extra space, please attach a separate sheet.

Both the LANDLORD and TENANT should sign and date any attachments.

Any additional terms must also comply with the Unfair Contract Terms under the *Fair Trading Act 1999*. Contact Consumer Affairs Victoria on 1300 55 81 81 for further information.

**Signatures**

**LANDLORD**

Signature of LANDLORD:

**Urgent repairs** emergency contact name and telephone number:

**TENANT(S)**

Signature of TENANT 1:

**TENANT(S)**

Signature of TENANT 3:

Signature of TENANT 2:

Signature of TENANT 4:

## 7.2 APPENDIX 2: NOTICES TO VACATE

<b>A: Reasons a landlord can ask tenant to vacate <u>before the end of the fixed term</u></b>	<b>Minimum notice required</b>	<b>B: Reasons a landlord can ask tenant to vacate <u>but cannot be before the end of the fixed term</u></b>	<b>Minimum notice required</b>
The premises are totally destroyed, partly destroyed and unsafe, or unfit to live in	Immediate notice to vacate	Tenancy agreement has a fixed term and states that premises is landlord's home and landlord will resume occupancy at end of the fixed term	14 days
Damage is maliciously caused to the premises or common areas by the tenant or the tenant's visitor	Immediate notice to vacate	Landlord is a government housing authority and tenant has unreasonably refused to seek or accept an offer of alternative accommodation	30 days
Tenant or tenant's visitor has endangered the safety of neighbours	Immediate notice to vacate	Landlord repairing, renovating or reconstructing premises immediately after termination (and has obtained necessary permits), and work cannot be done unless tenant vacates	60 days *
Tenant owes at least 14 days' rent	14 days	Landlord demolishing premises immediately after termination (and has obtained necessary permits)	60 days *†
Tenant has not paid the bond required by the tenancy agreement	14 days	Landlord using premises for a business or other non-residential purpose immediately after termination	60 days *†
Tenant has breached a VCAT compliance/compensation order	14 days	Landlord, landlord's immediate family (including parents and parents-in-law) or landlord's co-habiting dependent will live in premises immediately after termination	60 days *†
Tenant has already been given two Breach of Duty notices by the landlord, and the tenant's breach has occurred for a third time	14 days	Premises are to be sold or offered for sale with vacant possession immediately after termination	60 days *†
Tenant has used the premises or permitted their use for an illegal purpose	14 days	Premises have been sold under a conditional contract and all sale conditions have been satisfied	60 days *†
Tenant has engaged in drug-related activity in public housing	14 days	Landlord is a government housing authority and premises is required for public purposes	60 days *

Tenant has allowed a child to live at premises when the tenancy agreement does not allow children	14 days	End of a fixed-term tenancy of less than six months	60 days
The landlord is a government housing authority and has been misled by the tenant about their tenancy eligibility	14 days	End of a fixed-term tenancy of six months or more	90 days
Tenant has assigned or sub-let all or part of the premises without the landlord's consent	14 days	The landlord is a government housing authority and tenant no longer meets the eligibility criteria	90 days *
		No specified reason	120 days *

\* If a landlord gives a notice to vacate for this reason, the tenant can counter it by giving a 14 day notice of intention to vacate – but if the tenancy agreement has a fixed term, the termination date on the notice of intention to vacate must occur after the end of the fixed term.

† If a landlord gives a notice to vacate for this reason, they must not re-let the premises to anyone else for at least six months (unless they are re-letting to an immediate family member or cohabiting dependant).

### 7.3 APPENDIX 3: NOTICES OF INTENTION TO VACATE

<b>A: Reasons a tenant can give for vacating <u>before the end of the fixed term</u></b>	<b>Minimum notice required</b>	<b>B: Reasons a tenant can give for vacating <u>but cannot be before the end of the fixed term</u></b>	<b>Minimum notice required</b>
The premises are totally destroyed, partly destroyed and unsafe, or unfit to inhabit	Immediate notice to vacate	Tenant requires temporary crisis accommodation	14 days
Landlord has breached a VCAT compliance/compensation order	14 days	Tenant requires special or personal care (defined under the Act)	14 days
Landlord has already been given two Breach of Duty notices by the tenant, and the landlord’s breach has occurred for a third time	14 days	Tenant is offered public housing from the Director of Housing	14 days
		Tenant has been issued a notice to vacate by the landlord for one of the reasons marked * in the table above	14 days
		No specified reason	28 days