



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

RENT, BONDS & OTHER CHARGES:
RTA ISSUES PAPER

April 2016



ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

A key component of the REIV membership is the property management sector. The REIV represents the majority of property managers (PMs) in Victoria. The REIV's property management members, in turn, represent a significant number of residential landlords across the state.

Besides property management, members specialise in a range of real estate fields, including: residential sales, commercial and industrial sales, auctions, business broking, buyers agency, owners' corporations management and valuations.

Rent, bonds & other charges: RTA Issues Paper

1. What issues arise from the way in which provisions for bonds in the Act currently balance the interests of tenants and landlords?

While the provision of bonds in the Residential Tenancies Act (RTA) currently attempts to balance the interests of tenants and landlords, the REIV believes there needs to be greater support for landlords especially in cases of rent arrears or damage. This includes damage caused by smokers in rental properties and also by pets. At present, existing legislation only allows for the bond to be the equivalent of a month's rent for properties (ie those with a weekly rent of \$350 or less) which is often insufficient in covering damages caused by pets in particular. The Institute strongly supports a higher – or additional – bond for properties with pets. Finally, and most importantly, the REIV believes pets should only be permitted in rental properties by agreement between landlords and tenants.

In a survey of 700 landlords conducted by the REIV, more than half said they would be happy to rent their premises to a tenant with a pet. However, more than 77 per cent said they would want tenants to pay a higher bond to cover any damages. In a tenant survey, more than 76 per cent said they should have to gain a landlord's permission to keep a pet on their rented premises. Close to 60 per cent of tenant respondents said they would support a higher bond in order to keep a pet.

REIV members report the \$350pw threshold is restrictive and no longer relevant as it is currently only applies to entry-level properties within most inner city areas. Currently the Act states that agents and landlords cannot demand or accept a larger bond without a Victorian Civil and Administrative Tribunal (VCAT) order. Based on members' experience at VCAT, this could take weeks, which is simply too long to wait when trying to turn around an application form on a vacant property.

Another issue that arises under the current legislation

is the delay from the issuing of notice to vacate for rent arrears through to actually taking possession of a property. Landlords cannot issue a notice to vacate until the tenant is 14 days in arrears, which can then be drawn out in VCAT for an average of six weeks, inevitably resulting in the arrears exceeding the amount of the bond. By permitting agents and landlords to charge a more appropriate bond, it would improve the level of security for landlords and create a larger incentive for the tenant to meet their obligations.

Feedback from REIV members suggests the VCAT process of re-opening cases (sometimes up to three times) needs to be seriously addressed to ensure it is timely and considers landlord costs such as loss of income and property damage. Furthermore, the REIV suggests contested bonds be handled at the same time as any possession orders, to streamline finalisation of outstanding matters.

2. What features of the regulation of bonds in other jurisdictions should be considered in Victoria?

Victoria's bond processes work quite well, however all parties need to agree on an appropriate amount at the commencement of the tenancy. Greater flexibility will allow landlords and tenants to work together whilst taking into consideration all of the circumstances surrounding the arrangement, such as smoking and pets.

The REIV believes Victoria's legislation could benefit from adopting NSW's bond refund laws, as it would speed up the process of challenging bond situations where multiple parties are involved and may be unavailable or overseas. This includes the capability for a landlord to lodge a bond claim if the tenant does not apply within 10 business days (as per S163-176 NSW RTA).

In addition, the REIV supports amending the Act to allow for bond reviews (or increases) in long-term tenancies, as exists in Western Australia. The REIV is aware of many cases where a bond is no longer appropriate. A senior

REIV property manager reports a case where a tenant had occupied a property for a long period (12 years), yet only had a \$325 bond in place to cover any expenses or damage, following more than a decade in the premises.

3. What are the benefits of requiring landlords to provide greater assurance to tenants that they will meet their obligations under a tenancy agreement (for example, a landlord bond)?

The RTA and its associated regulations - as well as VCAT - already provide significant assurance for tenants that landlords will meet their obligations. At present, VCAT has the authority to order rent to be paid into a special fund until such time as repairs are carried out. Tenants are also entitled to be reimbursed for expenditure of up to \$1,800 on urgent repairs.

As tenants already have sufficient recourse (through VCAT), the REIV sees no benefit in requiring landlords to lodge a bond.

4. How important is it to limit the amount a landlord can charge as a bond?

Feedback from REIV property managers suggests the percentage of landlords charging larger bonds is minimal at best. Market forces usually work against landlords charging large bonds as prospective tenants may opt to not apply for these properties. With this in mind, the REIV does not deem it necessary to limit the amount of bond a landlord can charge. Each situation and property is individual and should be based on these merits. If landlord and tenant agree on an amount, then they should be allowed to do so.

The processes that operate at VCAT in the case of rent arrears, which can drag out over months given the waiting times and the ability for tenants to reopen matters if they have not attended a hearing, mean that a bond of one month's rent is inadequate protection for the landlord irrespective of the weekly amount of the rent.

5. What is the rationale for continuing to provide an exemption from the maximum allowable bond amount?

The REIV strongly believes tenants with pets should be

exempt from the maximum allowable bond amount. Feedback from REIV property managers indicates the current bond is often inadequate in repairing damage caused by pets, such as replacing carpet in multiple rooms. Under existing legislation, landlords are required to carry out repairs before they are able to attempt to recover their costs in VCAT, which may not even be awarded. This leaves landlords substantially out of pocket, whereas a larger bond would afford greater protection for landlords.

6. How does the availability of landlords' insurance affect the need for current exemptions from maximum bond amounts?

The availability of landlords' insurance should not, in any way, affect the current need for exemptions from maximum bond amounts. Landlords' insurance should not exempt tenants from liability for damage to property and the payment of rent. If it did, this would result in a significant increase in the premium cost due to the number of claims being made that may have otherwise been covered by a larger bond.

The REIV believes the claim made in this discussion paper regarding the take up rate of landlords' insurance is grossly overstated. The REIV is also aware that some insurance policies are only available to landlords who have their properties managed by an agent and, in some instances, if the tenancy agreement is for a fixed term. It's also important to note that landlords are often not aware of shortcomings in their policies, leaving them exposed.

Q7. What are the advantages and disadvantages of allowing landlords to review the bond amount for some tenancies every time a new tenancy agreement arises, or when there is a rent increase?

The REIV believes there is a genuine need for the Act to allow a review in the case of long term tenancies. The initial bond amount in these tenancies will become less relevant as the rent and the cost of repairs increases over time. This is particularly true of tenancies which exceed five years. During this time, there may have been significant changes to market rent and a review (or increase) of the bond will ensure adequate protection for

the landlord.

Q8. Are there any issues with taking a variable approach to bonds, for example in the context of rooming houses, caravan parks and residential parks?

A variable approach to bonds takes into consideration the variety of housing situations covered under this Act. The REIV believes rooming houses, caravan parks and residential parks should form a separate Act, rather than be included within the RTA. It would be easier to keep the approach to bonds consistent and for residential tenancies, and have other tenancies (rooming houses etc) as part of a separate Act.

Q9. What are your views about the current arrangements for claiming and paying amounts from bonds at the end of a tenancy?

The REIV believes the current arrangement of claiming deductions from bonds works well in the majority of circumstances. Feedback from REIV members indicates the majority of agencies and landlords complete the final inspection within a reasonable time frame. Most delays occur in instances where a tenant has caused damage, hasn't cleaned properly, or in a break lease situation where the bond cannot be finalised until costs can be quantified.

REIV members report that VCAT decisions regarding residential tenancy issues are often inconsistent. In addition tribunal members usually do not consider landlords who personally carry out labour (to rectify damage/dirtiness for which the tenant is liable) as able to claim, and entitled to compensation. While this refers to a VCAT interpretation, the REIV believes the RTA needs to be amended to address this issue, thereby ensuring landlords are compensated for their time when rectifying a breach by the tenant.

At present, landlords are required to present VCAT with invoices (rather than quotes) when seeking compensation for damage to their rental property. This severely disadvantages landlords who are forced to

pay for damages upfront before seeking any financial compensation from VCAT, which may not be awarded.

Also of concern is that landlords are currently not awarded compensation at VCAT for damage that devalues the property, unless a cost has been incurred in rectifying the damage. The damaged item may still be serviceable but the only way of rectification may be total replacement which would not be economically viable, leaving the landlord with a devalued asset but no compensation.

Q10. What scope is there for the Act to:

- specify a timeframe for lodging completed bond claim forms?
- allow immediate repayment to a tenant of any bond amount that is not contested?

The REIV would support the Act being amended to specify a timeframe for lodging completed bond forms. In cases where there are no deductions or disputes, the REIV believes bond claim forms should be lodged within seven business days. In cases where there are bond deductions (or disputes), this period should be extended to 14-21 business days.

Q11. As a tenant, have you been pursued for insurance costs that you have already paid out of your bond or through a compensation order issued by VCAT?

While the REIV is clearly not a tenant, once a VCAT order is granted determining costs against the tenant (which will take into consideration any bond) there are only a few options available to the landlord. These are: receive payment from the tenant; claim through the landlords' insurance company, which requires a copy of the order before payment will be made; or debt collection. Once the bond has been claimed through the RTBA, the order will clearly outline this action - and the relevant authorities (including insurance companies) making any further claims should be able to clearly see this.

Q12. What other requirements for bonds should be

considered for family violence situations?

Tenants who are victims of family violence are currently able to make an application of hardship at VCAT to terminate a fixed term tenancy. This should provide the individual with adequate protection against being 'black listed' and/or incurring further debt. In addition, the REIV would support the immediate return of the bond for demonstrated cases of family violence where the tenant needs to vacate quickly. However, this would require a VCAT order so that the onus was not on the property manager or owner to have to make that decision.

Furthermore, in cases of domestic violence, the REIV believes landlords should be able to claim from the Victorian Property Fund (VPF) for damage or rental arrears, which would fast-track rectification and further enable affected tenants to vacate properties more promptly.

Q13. What are other critical issues (if any) relating to bonds that have not been captured?

A large number of tenants currently live in arrangements often referred to as share houses. These people are not living as domestic partners but are sharing the same property and often do not all enter into - or exit - a tenancy agreement at the same time. Due to high housing costs, share houses are an increasingly common form of tenancy.

These tenancies are structured in one of two ways: a head tenant leases the property from the owner and then sub-lets to other tenants; or, a group of unrelated tenants enter into a tenancy agreement with the owner. In the first arrangement, the owner collects a bond from the head tenant, who in turn can collect bonds from the sub-tenants. This is the most viable of the two options, but the least common.

In the second scenario, when one tenant leaves, the lease is assigned to a new combination of tenants, however the original bond remains with the RTBA. The incoming tenant is forced into taking responsibility for damage that may have been caused by the outgoing tenant. The tenants can only settle bond matters between themselves and VCAT will not hear disputes between tenants. A series

of lease assignments may happen over many years, in some cases with none of the original tenants in place. The second option often results in lost bonds, bonds that are possibly never claimed from the RTBA and tenants who cannot be located.

The REIV is also aware that some rental properties experience extreme wear and tear, due to cultural lifestyle matters, and more individuals than expected living within close quarters.

All of these circumstances should be considered within this review.

Q14. What issues arise from the way in which provisions for rent and other charges in the Act balance the interests of tenants and landlords?

While the REIV believes the RTA is fair to all stakeholders in terms of provisions for rent and other charges, it is the administering of it (including through VCAT) which unfairly favours tenants. The REIV is aware of instances where the tenant has re-opened cases at VCAT up to three times, leaving landlords significantly out of pocket, especially in cases of rent arrears. As such, the current VCAT process is simply too lengthy to rely on a speedy resolution to rent arrears. There is also no enforcement of orders made at VCAT.

The REIV believes there is a legitimate need for an early breach notice when a tenant is seven days in arrears. The REIV would also support a 'multi-strike' policy, whereby a landlord can apply to VCAT for an Order of Possession when a tenant has been served multiple Notices to Vacate. This would serve as a deterrent for tenants who are consistently late with their rent. Payment of rent on time is also not currently specified as one of the duties of a tenant, thereby preventing the use of breach notices.

While VCAT Members offer tenants payment plans, in the majority of cases these simply do not work and result in the tenant becoming even further in arrears.

In addition, and most importantly, the REIV believes penalty interest should be permissible for tenants who are consistently late with their rent. When a tenant is consistently late, it causes significant financial stress on landlords, who often have to pay interest when they are

late paying their mortgage.

Q15. What features of the regulation of rent payment processes, other payments, and arrears in other jurisdictions should be considered in Victoria?

In relation to rent arrears, the REIV strongly supports amending Victorian legislation to align with Queensland's jurisdictional practice, whereby landlords are permitted to serve a notice when a tenant is seven days in arrears. Victoria's existing legislation prohibits landlords from issuing a notice before 14 days, which can then be subject to action in VCAT and further appeals from the tenant. This often results in significant delays and can sometimes result in the tenant being as much as three months in arrears. Feedback from REIV property managers indicates landlords are severely disadvantaged by the current legislation, with the bond inadequate to recoup losses. Feedback also suggests that a number of tenants regularly ignore – or even possibly abuse – the current legislation by paying their rent late by almost two weeks (ie up to 13 days), aware that they cannot be issued a notice as they are within the 14 day period required by the RTA.

In addition, the REIV believes it is imperative that the regulations allow for flexibility in permitting a wide variety of transactions. At present, tenants are afforded a range of rent payment options such as by credit card, money orders and bank transfer. While tenant advocates have been highly vocal in lobbying for no transaction charges on rent payments, it is simply not possible as credit cards incur bank charges and these cannot be passed back on to the landlord. It is ludicrous to suggest otherwise, especially when alternative payment methods are available.

Q16. What issues are raised by the current provisions in the Act limiting the ability to charge more than one month's rent in advance, and is it still relevant in a contemporary rental market?

Feedback from REIV property managers suggests that some tenants opt to pay a higher bond as a way of increasing their chance of obtaining a tenancy. This is particularly the case in instances where the prospective

tenant has a poor rental history or no history at all. Landlords who request more than one month's rent up front are usually concerned about the performance of the tenants. For this reason there may be benefits in having this in place and allowing more than one month's rent to be charged in advance, to allow for a variety of tenancies.

Q17. Why might it be important to limit how much rent can be charged in advance?

Feedback from REIV property managers indicates some tenants prefer to pay more than a month's rent in advance for a variety of reasons. In these cases, it is the tenant who instigates it, rather than the landlord. If a cap was to be in place, it would impact on tenants wishing to have this flexibility.

Q18. What is the rationale for providing any exemptions from the maximum amount of rent in advance?

As above.

Q19. What is your experience in either participating in or conducting a rental auction or rental bid process?

In the current rental market this does not appear to be an issue of note. At present, the current citywide vacancy rate is around three per cent and has been for some time. In some areas it is significantly higher than this which indicates that there is a higher level of available housing than there is tenants seeking housing.

With this in mind, the REIV believes that tenants should be afforded flexibility in this area. In particular, in the event of a higher rental offer being received by an agent for a property, the agent should inform all other prequalified applicants of the offer and give them a timeframe to respond by. It is important to note that agents do not initiate the rental bidding process, however, tenants seeking high-demand property in certain areas should be afforded the ability to outline the rental price that they believe the property is worth.

Q20. How well is industry self-regulation (such as the

REIV practitioner guidelines) addressing rental auctions and is there a need for any regulation?

The REIV does not believe rent bidding is a common practice, however it's important to understand that rental bidding processes are initiated by tenants. As the residential rental market is made up of a large number of landlords (including some who act for themselves) industry self-regulation, cooperation and a cohesive approach does assist and works fairly effectively.

Q21. Have you experienced an excessive rent increase that did not reflect market rents in your area and, if so, what was your response?

As it is in the landlord's best interest to retain existing tenants, feedback from REIV property managers indicates there are very few instances when a landlord proposes excessive rental increases. Agents often use comparable rents and advise landlords that tenants have rights of appeal or might decide to vacate, which could lead to a period of vacancy and if the property is relet will lead to additional costs in the form of the letting fee. In instances where the tenant contests the rent increase, agents would refer them to CAV. REIV property managers also report that in certain areas, rents have actually declined in recent months.

Q22. How effective is CAV's rent assessment process in resolving concerns about a rent increase?

While CAV's rent assessment process is well conducted, the process is too lengthy and agents often find it easier to negotiate directly with tenants and landlords.

Q23. What is an appropriate notice period for a rent increase?

The REIV believes the current notice period of 60 days' for a rent increase is appropriate. The REIV would like to see the Act amended to allow these notices to be sent by email.

Q24. What is an appropriate frequency for rent increases? Does this change for longer term tenancies?

Rent cannot be increased during a fixed term tenancy (unless the tenancy agreement allows for this), but can be increased with renewal or reletting. The REIV believes the current provision for a rent review every six months in periodic tenancies is appropriate.

Q25. If you have experienced a tenant repeatedly paying their rent late, what is the average period of time they are in arrears?

Feedback from REIV property managers suggests this is a very common problem, with some tenants only paying sufficient rent to ensure they are not more than 14 days in arrears at the time of a VCAT hearing. Experienced property managers suggest the average period of time would be 7-10 days in arrears. Amending the Act by implementing a breach notice after seven days, as recommended by the REIV, would greatly improve the current situation.

Q26. If you are a tenant who has paid their rent late, what is the reason for your late payment, and how late has your payment been?

As this question is directed at tenants, the REIV has opted to not provide a response.

Q27. What issues might arise from the fact that the late payment of rent (ie late by less than 14 days) is not currently a reason to allow a landlord to issue a breach of duty notice?

The payment of rent is a fundamental part of a tenancy agreement, yet the Act fails to specify that the tenant has a duty to pay the rent on or before the due date, thereby preventing the landlord from issuing a breach of duty notice. The major issue that arises from this is that tenants frequently ignore the legislation, regularly paying rent late by up to 14 days. As such, the REIV strongly supports amending the Act to allow for a breach notice to be served when a tenant is seven days in arrears.

Tenants are responsible for paying rent and landlords should not be put in a position where they have a mortgage repayment due and the rent hasn't been paid. If a tenant had a mortgage and didn't make the monthly payments, the banks would be acting promptly to this breach (and often

charging interest). **Renting a property is no different and landlords should be afforded greater protection.**

In exceptional circumstances, the REIV is of the understanding that the majority of property managers/ landlords would work with a tenant if they couldn't pay the full amount of their rent.

Q28. What are the arguments for or against allowing a landlord to claim compensation for incurring final losses because rent was paid late?

Tenants who are regularly late with their rent payment place unnecessary financial stress on landlords. In some instances, landlords are incurring interest on overdue mortgages because the rent hasn't been paid. As such, the REIV would support allowing landlords to claim compensation for that loss.

Q29. How common are holding deposits? In what way do they uphold the rights of either landlords or tenants?

Feedback from REIV property managers indicates holding deposits are not a common occurrence in residential tenancies. While they provide landlords and agents with security that a tenant is taking a property, it is not common practice. At present, a vast number of agencies usually ask the tenant to pay rent or bond to secure a property, rather than a holding deposit. Financial commitments uphold the rights of all stakeholders as it prevents either party from walking away from the agreement. However, the REIV is aware that even though a tenant may have signed an agreement and provided one month's rent and bond to the agent, in some circumstances if they haven't taken possession of the premises (ie moved in) - then they can legally withdraw their application.

Q30. What are your views about a possible requirement that at least one fee-free method of paying rent be provided?

The REIV is aware that the majority of agencies now provide tenants with a number of different rent payment methods, one of which is usually fee free. Fees, such as

those incurred by credit card payments, are beyond the control of landlords or agents. Tenants can always opt to use direct debit, which does not attract fees.

Q31. Why are tenants currently required to pay the transaction costs of using third-party rent collectors?

As stated above, tenants are afforded multiple payment methods and many of these are fee free. It is beyond reason to suggest that landlords should have to pay a fee for the tenant paying rent.

Q32. What critical issues are there (if any) relating to rent and other payments that have not been discussed?

The critical issue in regards to the rent is consistency and reliability of payments – coupled with issues arising from the recovery of rent when it is significantly in arrears. This area is vital, to ensure that landlords have certainty in regards to payment and the timing of rent. Fees for assigning leases are also a common cause of disputes. The REIV believes these fees should be transferable to the tenancy/tenant for payment, which would clarify this issue.

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