



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

RESIDENTIAL TENANCIES ACT REVIEW

Security of Tenure - Issues Paper

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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.

The businesses employ more than 10,000 people in Victoria in a market which handles over \$70 billion of transactions totalling 22 per cent of GSP.

Members specialise in all facets of real estate, including: property management, residential sales, commercial and industrial sales, auctions, business broking, buyers agency, owners' corporations and valuations.

Introduction

The REIV is the peak body for licensed real estate agents - representing the majority of property managers (PMs) in Victoria. The REIV's PM members, in turn represent a significant number of residential landlords across the state with members operating in city and regional centres.

RTA-Overview

The Residential Tenancies Act and the associated legislation is of significant importance to our members. More than 1,200 of our members belong to an REIV PM chapter dedicated to the management of residential rental premises.

In response to the Security of Tenure issues paper, the REIV has established an RTA Working Group comprised of senior property managers who collectively represent residential rental properties across Melbourne and regional Victoria.

The REIV has also sought input from its broader membership about security of tenure issues and what they believe is important for both tenants and landlords.

RTA-General Comments

In 2014, nearly 470,000 of Victoria's 1.95 million households privately rented the premises in which they live with the median length of tenancy only 18 months (VLRC Consultation, Photographing Tenants Possessions, 2014; Introduction (p.4)).

The REIV believes this remains an accurate reflection of the current rental market with very little, or no, demand from either tenants or landlords for long-term tenancies.

REIV Response

The following outcomes were gained from the Member consultation process.

Tenants

1. Why is security of tenure important for Victorian tenants?

The Security of Tenure issues paper states that 'security of tenure is important today for a greater proportion of Victorians than ever before given that more Victorians are renting...for longer'.

However, feedback from REIV property managers indicates that shorter term tenancies remain the norm.

The REIV's RTA Working Group – formed specifically to garner input from across the property management sector – believe long term tenure security is not currently important to tenants.

Landlords are of a similar view – one example cited to the REIV highlighted the preference of an owner to retain flexibility by choosing a short-term (one year) tenancy over a long-term lease (five years).

Members of the RTA Working Group categorically stated the majority of tenants value the flexibility offered by short-term fixed tenancies, which on expiry, become flexible, periodic tenancies.

2. What factors influence tenants' preferences for stability and flexibility in rental accommodation?

More people are employed in contract, casual and part-time employment than ever before, which requires tenancy agreements and the Residential Tenancies Act (RTA) to be adaptable to tenants' changing needs.

The majority of REIV property managers have indicated that, for this reason, there is little or no demand for fixed-term tenancies beyond two years.

Senior property managers have outlined to the REIV that tenants prefer the flexibility of short-term tenancies as it allows for changing circumstances in employment and

lifestyle. The REIV believes it is possible to offer tenants the ideal combination of stability and flexibility through the use of rolling periodic tenancies.

Landlords

3. What factors influence the preferences of landlords when deciding the period of a tenancy?

Standard fixed-term tenancy agreements are negotiated by landlords and tenants, with agreement needing to be reached by both parties before a lease is signed.

In this way, the length of a tenancy is not influenced purely by landlords; rather it is a reflection of market demand.

4. How important is it for landlords to establish stable tenancies in their rental properties?

Landlords want stable tenancies, and reliable tenants; but stability does not equate to a long-term tenancy.

For landlords, the most important factor is a reliable tenant. As such, the REIV's RTA Working Group likens stability with reliability and flexibility.

The preferred fixed-term tenancy length is at least a year, as it reduces wear and tear on the property.

5. How important is it for landlords to be able to regain possession of a rental property?

It is just as important for a landlord to be able to regain possession of a rental property as it is for tenants to be able to vacate.

REIV members report tenancy termination by mutual agreement is quite common, in the current property market.

Like tenants, landlords want flexibility in relation to their

leased property. Landlords may need to regain possession for a variety of reasons, such as change of personal circumstances or financial hardship.

Matching tenant & landlord preferences

6. What are the main reasons tenancies end, from both landlords' and tenants' perspectives?

A change in circumstances is the main reason a tenancy ends – for tenants and landlords. As outlined earlier, this may be a change in employment or lifestyle. Other key reasons include a change in relationship status or financial hardship.

For premises that are not managed by a property manager, a lack of regular maintenance can also be a key reason for a tenancy ending.

7. What are the obstacles in the rental market for tenants who prefer longer tenure from achieving this?

Repairs and maintenance of rental properties can be obstacles for tenants who prefer long-term tenancy.

Repairs are carried out more frequently with short-term leases, generally before a new tenant moves in.

In a competitive rental market, frequent maintenance is required in order for property managers to relet rental premises.

Lease Terms

8. What are the obstacles (including any provisions in the Act) to tenants and landlords entering long leases?

As outlined earlier, there are no obstacles to tenants entering into leases of up to five years or more.

Those seeking tenancies longer than five years can do so legally at present, with this covered by the general law of landlord and tenant.

The key question is whether there is an appetite for long term leases, which – according to industry specialists (senior

property managers) – there is not.

9. How do industry practices influence lease terms and the duration of tenancies more generally?

Feedback from the RTA Working Group indicates industry practices only reflect market activity, rather than influence it.

Tenants and landlords prefer leases that are flexible, and allow tenants to change their lease arrangements – that is, to terminate their tenancy agreement – as required.

10. What role would long (five to ten year) leases play in strengthening security of tenure?

Mandating long-term tenancies will not strengthen security of tenure. As tenants and landlords show no general preference for them, a multiplicity of issues are bound to arise.

If long-term tenancies are encouraged it will pose multiple issues as tenants will potentially sub-let their rented premises to avoid breaking their tenancy agreements. This, in turn, creates significant issues (for tenants and landlords) in relation to bond transfers, maintenance, compensation, accountability etc.

The age of rental properties is another issue to be considered in relation to long-term tenancies. A long-term tenant will make it virtually impossible for a landlord to carry out substantial maintenance. It is likely to also restrict capital improvements, as they will cause significant disruption to a tenant.

Long-term tenancies will also impact the sales market, as investors will be reluctant to tie up their assets for lengthy durations with very few exit options available to them.

If five year tenancies are mandated, the REIV foresees informal sub-letting becoming the norm as tenants arrange their tenancies to suit their needs.

11. What factors or circumstances would make longer leases attractive to tenants and landlords?

The REIV believes very few factors will make long-term leases attractive to the majority of tenants and landlords.

12. If long term leases were provided for in the Act, what protections (if any) would be required for tenants who are seeking only short term leases?

The REIV considers it is highly undesirable for government to impose any length of tenure for residential tenancies.

Landlords and tenants should be allowed to freely negotiate any length of tenure they choose, and the RTA should apply no matter what length is chosen.

If long-term leases were to be incorporated into the RTA, there will need to be significant protection for landlords, as they are supplying investment properties for extended periods.

There will need to be rent reviews, at regular intervals. Both parties – landlords and tenants – would need flexibility to break the tenancy if there are unforeseen circumstances (that is, if circumstances change significantly).

Tenancy Terminations

13. What issues are there regarding the way in which termination provisions in the Act affect security of tenure?

The majority of REIV property managers consulted believe provisions in the Act favour tenants and it is difficult for landlords to terminate a tenancy, whether fixed-term or periodic.

While, in the Act, there is a “no specified reason” clause that can be utilised by a landlord during a periodic tenancy, it requires a 120 day notice. This is significantly longer than that required in other states.

The REIV believes this notice period should be reduced – to 90 days - to coincide with NSW and South Australia legislation.

As outlined on page 28 of the Security of Tenure issues paper, there is limited scope to end a fixed-term tenancy agreement in Victoria.

14. How much notice would be appropriate for the tenant to give to the landlord when providing a notice of intention to vacate?

The notice period for tenants is currently 28 days, which is considerably less than that required for landlords. While this is well below the notice period expected for landlords, this notice period for tenants (28 days) is considered appropriate and should not be altered.

15. How much notice would be appropriate for the landlord to give the tenant when issuing a notice to vacate?

There are various notices that can be issued under the Act. The notice period generally ranges from 14 days to 120 days.

As outlined separately in this paper, the REIV believes the 120 day notice period should become a 90 day notice period, in line with other states including New South Wales and South Australia.

Where a major issue arises - significant rent arrears or damage to property or danger to neighbouring occupants - there is an immediate termination. The REIV believes this is appropriate.

16. What are the reasons why landlords use the ‘no specified reason’ notice to vacate?

There are a range of reasons, ranging from tenant conduct to rental inconsistency. This is an important part of the Act which allows landlords to regain possession of their premises while providing the tenant with ample notice.

17. Rather than relying on a notice to vacate for ‘no specified reason’, are there other ways to do this?

No. The notice period is more than sufficient for tenant and landlord needs.

18. What options or initiatives could be used to encourage landlords to choose to maintain tenancies rather than issuing a notice to vacate?

Usually, the notice to vacate for 'no specified reason' is triggered by rental issues such as rent arrears and inconsistent payment. In order to encourage landlords to opt to maintain tenancies, the Act could be amended to include: "A breach of duty to pay the rent."

This breach could include interest payable on rent arrears, which would ensure tenants are held accountable in complying with their tenancy agreements.

The majority of property investors are small investors with only one rental property and have a moderate annual income.

As such, rental inconsistencies seriously impact their ability to maintain their investment and meet financial obligations, such as making the repayments on the mortgage they have taken to buy their investment property.

19. What would be the impact of removing the notice to vacate for 'no specified reason' from the Act?

If the right to issue a notice to vacate for 'no specified reason' was removed for landlords, then the equivalent right would also have to be removed for tenants.

Under the RTA there are very few avenues for a landlord to end a periodic tenancy (other than to renovate or sell the property). Removing the notice to vacate for 'no specified reason' will take away a valuable right for both landlords and tenants – a right available in every other Australian state.

Retention of this notice is important, to ensure Victoria is aligned with other states.

It is important to note this notice was increased from 90 days to 120 days when the RTA was last reviewed. Despite being increased to 120 days, tenants are able to challenge the notice to vacate for 'no specified reason' and it cannot be issued in a retaliatory manner.

Rent Increases

20. What issues are there regarding the way in which provisions for rent increases in the Act affect security of tenure?

The REIV believes the current provisions for rent reviews (which is the correct term, rather than rent increases) are appropriate.

It is important to note that rent reviews can, in a market where vacancy rates are rising (as at present in many Melbourne inner and middle suburbs), result in a reduced rent or mid-term stable rent levels.

In addition, tenants who disagree with a rent review (ie a rent increase) can have the matter reviewed, or in extreme cases leave a tenancy before the increase takes effect.

It is also important to note in fixed-term tenancies, the rent increases are pre-determined by the tenant and landlord which provides surety to both and clarity around rent reviews.

21. What would be an appropriate alternative to the current frequency of allowable rent increases of no more than one every six months?

The current rent review arrangement is appropriate, particularly in the first six months of a periodic tenancy. Landlords need the capacity to review rent in any rental market (falling or rising), to ensure that it is appropriate.

22. What would be an appropriate alternative notice period for rent increases to the current 60 days?

Sixty days is appropriate and should not be changed. It provides an appropriate notice period for tenants, and an acceptable timeframe for landlords. If the timeframe was extended beyond 60 days, it would dramatically change the balance in favour of tenants; at present, the REIV (and RTA Working Group members) believe the balance is fair.

23. What would be an appropriate arrangement for rent increases during fixed term agreements to provide both tenants and landlords with certainty and choice?

It is unusual for a landlord/property manager to implement a rent review or increase during a fixed-term tenancy.

If the lease term exceeds 12 months, an agreed increase is often written into the lease to occur after the expiration of the first 12 months. The REIV believes that this is appropriate and should not be altered in the Act.

Repairs, Maintenance & Modifications

24. What issues are there regarding the way provisions for repairs, maintenance and modifications in the Act affect security of tenure?

The RTA Working Group, considers there is no correlation between repairs and maintenance and security of tenure.

This is borne out in that the RTA Working Group state landlords spend up to \$2,000 a year on maintenance and repairs on items such as fencing, security doors, internal doors, shower screens, hot water systems and the like.

On average, landlords spend at least half this amount on repairs and maintenance, according to the RTA Working Group.

25-37. Rooming Houses/Caravan Parks & Residential Parks

As outlined in the REIV's initial submission to the RTA review, we believe that these areas should be removed from the Residential Tenancies Act and form a separate set of legislation.

The legislation relating to these properties (and tenants) varies significantly in comparison to residential tenancies.

Summary

The REIV thanks Consumer Affairs Victoria (CAV) for providing the opportunity to deliver input to the Security of Tenure Issues Paper. The REIV's key findings include:

- Standard fixed-term tenancy agreements are negotiated by landlords and tenants, with agreement required by both parties before a contract is signed. As such, tenancy durations are not influenced by landlords; rather they are a reflection of market demand.
- The REIV believes the Residential Tenancies Act currently favours tenants, with notice periods in periodic tenancies significantly less for tenants. Under the current Act, tenants are required to provide less than a month's notice (28 days) while landlords must provide up to four months' notice (120 days).
- The REIV would also like to see the notice for 'no specified reason' period reduced from 120 days to 90 days, aligning Victorian legislation with neighbouring states.
- Empirical evidence from REIV property managers suggests the overwhelming majority of tenants and landlords prefer short-term tenancies no longer than three years. Short-term tenancies provide both parties with flexibility and stability, allowing for unexpected changes in personal circumstances.

The REIV looks forward to continuing to provide input to the RTA review as it progresses over 2016-17.

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