

15 April 2016

Residential Tenancies Act Review – Fairer Safer Housing
Rent, Bond and other Charges Issue Paper

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

Dear Sir / Madam,

***Submission of the Barwon Community Legal Service to the Fairer Safer
Housing Review – Rent, Bond and other Charges Issue Paper***

Barwon Community Legal Service (BCLS) provides free legal advice and specialist casework services to people who live in the Geelong, Bellarine Peninsula, Surfcoast and Colac Otway regions. BCLS also provides limited services to people who live in Corangamite, Moyne, Warrnambool, Glenelg and Southern Grampians shires. Our catchment region consists of over 360,000 people with many pockets of extreme disadvantage.

We also provide community education and training directly to the community and to other community sector staff and government. We run community awareness campaigns and provide education that gives people the knowledge to self manage their situation and assert their rights. We also contribute to policy and law reform work.

The below submission is compiled with reference to BCLS experience in assisting clients and personal experiences of these client, staff and volunteers.

Questions for consideration**How the Act regulates bonds****1 What issues arise from the way in which provisions for bonds in the Act currently balance the interests of tenants and landlords?**

- Bonds under the current Act have a maximum amount allowed to be paid if the rent does not exceed \$350 per week. If the rent is higher than this there are no maximums or restrictions. The issue with the present rent cap triggering a maximum bond amount is no longer relevant in today's market. In the current rental market a significant number of tenants pay more than \$350 per week and are therefore exposed to uncapped bond amounts.

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

- We submit that we follow the example of New South Wales and Tasmania and prohibit bond increases during tenancy. Even when the rent is increased, the amount paid to the bond authority should not be similarly impacted and place a larger financial burden on tenants.
- Some foreign jurisdictions, such as Ontario (Canada), prohibit bond payments. In place of prohibition, we submit bonds should be limited, their upper amount closely controlled. This might include a maximum of four weeks rent in bond for the upper tier of rental market, a maximum of two weeks rent for the lower tier with the cut off amount been linked to an appropriate index.

Commencing and maintaining a tenancy agreement**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)?**

- Requiring landlords to provide greater assurance to tenants that they too will meet their obligations under a tenancy agreement would allow for greater accountability of landlords and peace of mind for tenants who have previous experiences with landlords not fulfilling their duties.

- We submit that measures such as requiring the landlord to also pay a bond would work to place parties in the same position, helping to improve balance of power. At present landlords hold significantly greater power with control of the tenant's current housing arrangement and right to claim against the bond. A tenant's right to also claim against a landlord bond should they neglect tenant requests and duties owed would place the parties on more even ground.
- Furthermore the interest on the additional bond money can be used to fund appropriate services.

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

- The Act was written when rental costs (proportion of rent to income) were lower. One month's rent in the form of bond now represents a double dose of unaffordability: first the high rent, then its multiple in the form of bond and rent in advance.
- When bond is calculated as a multiple of the rent, and rents are high, bond acts as a barrier to entry to the tenancy market for those already excluded from the housing market with the addition of rent in advance. Limiting the amount that can be charged as a bond allows for an opening of the market to those who need it most.

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

- When the Act was written the uncapped bond for higher rent properties ensured greater protection for a landlord. In a previous market those exempt were only high end properties with additional features such as high tech security and appliances, pools and other extra amenities. In the current housing market this rationale, at the exemption's current level, is applying to low to mid range housing that does not have the additional features that warrant extra protection. As such we submit there should not be an exemption.

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

- Inexpensive landlords' insurance offers good protection to the landlord and removes the need for burdensome bond payments levied on the tenant.

7 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 advantages of allowing landlords to review the bond amount for each new tenancy agreement include the ability to increase the bond for more high risk tenants or alternatively lower the amount charged for tenants that pose little to no risk. In addition there may have been changes or repairs made to the premises that increased the value of the property and the value of any damage caused since the last tenancy agreement warranting such as increase.

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

- A variable approach is to be recommended as it means the bond amount can reflect the value of the arrangement and type of tenancy. This is a more flexible approach to bonds.
- Rooming houses and caravan parks now represent a different part of the rental market. Just as traditional home buyers have been priced out of housing market, so too traditional renters are being priced out of the traditional rental market and are being displaced into areas such as rooming house arrangements and caravan parks. With this migration in the rental population, the nature of tenancies in rooming houses and caravan parks is changing. Traditionally transitory housing, rooming houses and caravan parks are becoming longer-term rental propositions.

Ending a tenancy agreement

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

- Landlords are not taking reasonable steps to notify tenants when they wish to make a claim against the bond.
- VCAT is happy to grant extensions past the 10 days in order for the landlord to make a claim against the bond.
- Current arrangements can cause significant delays in the return of the bond.
- Currently a bond claim, by a tenant, can take over a month to resolve if it is not by consent. A landlord must lodge a claim against the bond within 10 business days of a tenancy ending. If a claim is made by the landlord or a bond refund form is not signed a tenant can be faced with having to find additional funds to pay a second bond whilst waiting for VCAT to deal with the original bond. If the original bond was from the Department of Housing Bond Loan, a tenant is normally not able to access a second loan until the original is repaid.

10 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?
- To reduce demand on VCAT's limited resources and to speed up the return of bond process we submit the legislation should be amended to automatically return a bond to a tenant when notice is given to the Residential Tenancies Bond Authority ("RTBA") of the end of a tenancy. Once notice has been given the RTBA can notify other interested parties and if no claim is made against the bond, by the landlord, in the following 10 business days the bond is paid out. These provisions could be similar to those contained in the *Residential Tenancies and Rooming Accommodation Act 2008 (QLD)*, sections 136.
- With higher rent – and resultant bond costs – comes a greater imperative for prompt bond return. As bonds represent a larger outlay of income, immediate

repayment would mean income bound up in bond would be available to assist with living costs or new bond payments.

General

12 What other requirements for bonds should be considered for family violence situations?

- Victims of family violence may not be in a position to pay bond. The form of the violence may have been economic control, aimed at depriving the victim of financial independence. This may include preventing the victim from working or from saving money. The effect is the victim of family violence may not have money for an up-front lump-sum bond. These should be covered by some sort of bond loan scheme.

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

- If bond amounts cannot be restricted, the Depart of Housing bond loan scheme may need to be more widely franchised by relaxing the eligibility requirements.
- The needs of those fleeing family violence and finding new premises need to be considered. Suggestions include exemptions from bond payments, payment plans or an extended bond loan scheme in situations of family violence.

How the Act regulates rent and other charges

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

- Regulation regarding commencing a tenancy agreement should be considered.

Commencing a tenancy agreement**16 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?**

- The exemption for a maximum of 1 month's rent paid in advance is not longer relevant as 50% of new tenancy agreements are for amounts higher than \$350. As a result, the operation of this provision does not apply to 50% of the market.

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

- A lot of tenants already face substantial financial pressures to be able to afford rent and living expenses with the added burdens of moving costs, bonds and rent in advance.
- Rent in advance acts as a barrier to the rental market for those without savings and those on lower incomes.
- Limiting rent in advance helps to keep renting a viable option for those unable to afford buying.
- Rent in advance multiplies the already high rental costs, making rent unaffordable.

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

- The landlord's financial loss increases more quickly if the tenant defaults on rental payments in a higher rent premises.
- It acts as an incentive for the tenant to fulfil their obligations.
- However this needs to be considered in light of relevantly cheap landlord insurance that helps minimise this type of loss for a landlord.

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

- They can drive up rent. The rental price that results then becomes the benchmark for market value of rent which can then support subsequent surrounding rent increases. A rental auction for one property can yield a price which may then be

taken to represent market rent to support rental increase to another neighbouring property.

20 How well is industry self-regulation (such as the REIV practitioner guidelines) addressing rental auctions and is there a need for any regulation?

- Experience suggests that self-regulation is not uniformly successful. In some sectors of the state where rental properties are in high demand/short supply, rental auctions are accepted practice. In these sectors, property managers even recommend to potential tenants that if they want to be successful securing a rental then they should submit a higher rental 'bid' than the rental price advertised.

During a tenancy agreement

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

- Yes. I negotiated a smaller increase. Our starting price was inflated due to being product of rental auction, so we argued that any market increase was already partly built into the current rent.

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

- Overall it is effective, however issues exist with delays. During the period CAV performs its assessment process, the tenant can be paying the higher rent.

- Further, CAV's process can only partly help address rent increases as policing rent increases only addresses part of the problem. The issues paper states "Generally, landlords have a disincentive to increase rents excessively for current tenants as it can result in a loss of income if a tenant leaves." This ignores the weight of convenience keeping the tenant where they are: moving is costly, tiring, difficult to fit in with work, kids, and means contact details need changing, utilities need reconnecting. Also properties are not all the same: they may not be simply swapped for another if the alternative property will not keep a family in a school or kindergarten catchment. These forces can favour tenant inertia, where they stay put and pay the increased rent rather than take on the administrative burden of moving.

23 What is an appropriate notice period for a rent increase?

- In some situations, price increases in the rental market might significantly outstrip CPI or wage increases. In such a situation, a rent increase may represent too great a price jump for the incumbent tenant and have the same material effect as a notice to vacate. Accordingly, we submit a 120-day notice period is appropriate.

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

No more than one increase every 12 months is appropriate. Furthermore no increase should occur during a lease period, unless the exact amount is specified in the lease agreement. Rent increases take advantage of tenant inertia, where the force of convenience keeps tenants in their current property rather than re-enter the marketplace to find new accommodation.

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

- No deterrent for repeatedly late payments.
- Tenant can continue to pay 1-13 days late for the duration of their tenancy without any repercussions.
- Understandably this is a cause of frustration for property managers and landlords. However consideration needs to be given to the fact that if a tenant is 14 days in arrears they face been sent a notice to vacate and possible losing their home if the arrears are not rectified. There are many reasons tenants may fall behind in rent payments so some flexibility needs to be allowed for.

28 What are the arguments for or against allowing a landlord to claim compensation for incurring financial losses because rent has been paid late?

- The renting of a property by a landlord, be it a single investment property or a large portfolio of properties is a business. As with any business there is some risk associated. A business should have some buffer to cover late payments of rent so as not to incur any costs. It is a dangerous position for a landlord to be in to solely rely on incoming rent to pay a mortgage.

Conclusion

All legislation should be subject to ongoing review. The submissions suggested above could be introduced gradually but any suggestion introduced would be a good step forward.

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