

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

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

11 August 2016

Dear Sir/Madam

Response to the RTA Review Consultation Paper

We write this submission in response to the Residential Tenancies Act Review Regulation of Property Conditions in the Rental Market - Issues Paper (**Issues Paper**). Inner Melbourne Community Legal (**IMCL**) welcomes the opportunity to contribute to the review of the *Residential Tenancies Act 1997* (Vic) (**the Act**).

Introduction

IMCL is a not-for-profit community legal centre that provides legal assistance to disadvantaged and marginalised people in the City of Melbourne area, including the CBD, Docklands, West Melbourne, North Melbourne, Carlton and Parkville. IMCL has been assisting disadvantaged and marginalised people in Melbourne's inner northern suburbs for more than thirty years. It is a priority for IMCL to actively engage with the most vulnerable members of our community.

This engagement includes maintaining strong relationships with local organisations who also provide services to these priority clients. Critically, our work involves co-locating lawyers in partner organisations to ensure that we are accessible to those clients most in need of our legal assistance.

As a generalist service, IMCL provides legal support, advice and representation in a range of areas, including in relation to tenancy laws and the application of the Act. As an organisation that provides assistance to the most vulnerable members of our community, including individuals experiencing homelessness, mental health issues, drug and alcohol dependency and family violence, we are well placed to observe the ways that the Act and regulation can at times fail those most vulnerable members of our community, resulting in unsafe and unsecure accommodation and a lack of legal recourse for some members of our community.

Recommendations

IMCL makes the following recommendations:

Mandatory Minimum Standards for Rental Accommodation

Questions 9-12

Further to IMCL's submissions on 5 August 2015 in response to the Laying the Groundwork - Consultation Paper we support the introduction of minimum standards for rental properties. It is our view that a central purpose of residential regulatory and policy framework in Victoria should be to ensure that rental properties are safe, structurally sound, weatherproof and fit for habitation.

While landlords are required under the Act to undertake repairs to premises,¹ there is neither a financial nor regulatory incentive for landlords to ensure that rental housing is fit for habitation when it is offered for lease. Under the current Act, a property could be leased without a toilet, electricity and running water.

In our submission, the introduction of mandatory standards for all rental properties is necessary to ensure that Victorians are able to access safe and secure housing.

Recommendation 1: The Act be amended to introduce mandatory minimum standards, which should include, at a minimum:

- Premises must be weatherproof and structurally sound
- Insulation must be installed in the premises
- Premises must be adequately ventilated and free from damp and mould
- Bathrooms and toilets must be provided
- Cooking facilities must be provided, including a sink connected to water, a stovetop and oven
- Electricity, water and heating with a minimum energy efficient of 4 stars must be provided
- Window coverings for privacy must be provided all rooms used as a bedroom or living area
- Smoke alarms must be installed and hardwired

Condition Reports

Questions 13 and 14

IMCL considers that condition reports are an important and effective tool for recording the initial condition of rental properties. However it is often difficult to adequately describe and record the condition of properties as such descriptions are largely subjective. This point has been raised already in this issue paper in relation to the question of what is *reasonably* clean.

IMCL submits that a requirement for photographs to form a part of the condition report in addition to written comments be introduced into the legislation. Photographs would assist in more accurately

¹ Sections 72-77 of the Act.

recording the condition of properties at the start of the tenancy and would assist VCAT when making determinations under section 417 of the Act.

It is IMCL's view that all tenancies must also have a condition report irrespective of whether a bond was paid, including Office of Housing properties. It is IMCL's experience that public and community housing providers often do not require tenants to complete a condition report as they do not request a bond.

IMCL's experience is that it can be difficult to establish pre-existing damage in properties where an initial condition report was not completed. Sections 209, 210 and 452 of the Act allow for compensation to be awarded for damage to property even where a bond has not been lodged. It is IMCL's view that a condition report would assist all parties when there is a dispute about the damage to the property, in addition to being of significant assistance to the tribunal in applications under sections 417 and 209.

This is particularly relevant in Office of Housing properties where tenants are sent 'maintenance charges against the tenant' (MCAT's) after they vacate. It is not uncommon for such charges to be indiscriminately applied without consideration as the liability of the tenant.

If condition reports were completed at the start of all tenancies it would be easier to establish if such tenants are in fact liable for all charges sought in MCATS. Further IMCL welcomes the Victorian Ombudsman's own motion investigation into MCAT charges as they are an ongoing systemic issue which has a significant impact on vulnerable tenants.

Recommendation 2:

The Act be amended to include that a condition report be required for all residential tenancies, including public and community housing.

Further that the Act be amended to require landlords to provide photographs to accompany all condition reports.

Landlords' Consent for Fixtures, Alterations and Additions

Question 19

Currently there is no mechanism in place to allow tenants to make modifications where the landlord is unreasonably withholding consent. This is of concern because tenants may be refused reasonable requests, such as installing a hand rail in showering areas or installing a phone line but have no recourse should the landlord refuse this request.

Further, the Act does not require the Office of Housing to make any disability modification. It is important that such a mechanism be implemented to provide protection to vulnerable tenants who reside in public housing. Should there be a dispute between the parties about disability modifications, tenants are currently unable to obtain orders that such modifications be carried out.

Recommendation 3:

That the Act be amended to allow the tribunal to make orders allowing tenants to make modifications to the property where the landlord is unreasonably withholding consent.

The Act be amended to allow the tribunal to make orders directing the Office of Housing to make disability modifications.

Existing Processes for Repair and Maintenance

Question 27

It is IMCL's view that the existing processes for addressing repairs and maintenance issues are undermined by two issues:

1. 120 day Notices to Vacate (sections 263 and 289) erode the ability of tenants and residents to enforce their rights without facing the risk of eviction. While there are provisions in place which allow tenants and residents to challenge such notices (which are provided without reasons) on the basis that they have been given in retaliation for exercising their rights under the Act, these are largely ineffectual. This is largely reflected by the very small number of tenants/residents who apply to VCAT in comparison to landlords. The tribunal is often unwilling to order that a second or subsequent no reason Notice to Vacate is retaliatory due the passing of time between the serving on the second notice and the tenant enforcing their rights under the Act. Alternatively a landlord could just wait a period of time after a tenant has enforced their rights under the Act and then serve a no reason notice.
2. Further there is little to enforce that VCAT orders be carried out. Historically VCAT has been loathe to find parties in contempt and are reluctant to make orders that rent be paid into the rent special account.

As a result of these issues, tenants can be reluctant to seek orders for repairs and when repair orders are sought they are not adequately enforced. Unfortunately, some parties (particularly unregistered rooming house operators) are familiar with these shortcomings and do not address repairs issues or comply with VCAT orders.

Recommendation 5: That 120 day Notices to Vacate for no reason (sections 263 and 289) be repealed.

Please do not hesitate to contact Olivia Ridley on 9328 1885 if you have any questions at all regarding this submission.

Yours sincerely



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