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**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
RESIDENTIAL TENANCIES DIVISION**

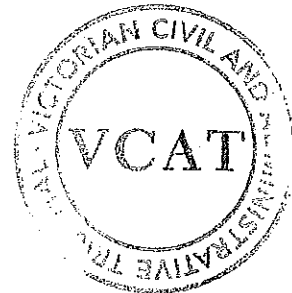
RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2015/121

CATCHWORDS

Section 250B Residential Tenancies Act 1997; Meaning of Prescribed Indictable Offences

APPLICANT	Haven; Home, Safe.
RESPONDENT	Kane Edwards
WHERE HELD	Bendigo
BEFORE	M. Harvey, Member
HEARING TYPE	Hearing
DATE OF HEARING	7 April 2015
DATE OF ORDER	29 May 2015
DATE OF WRITTEN REASONS	29 May 2015



The Tribunal orders and directs that:

The application is dismissed.

M. Harvey, Member
29 May 2015

APPEARANCES:

For Applicant	Ms Batrouney for landlord
For Respondent	No appearance for tenant

WRITTEN REASONS

1. The landlord seeks an order for possession based upon a notice to vacate given to the tenant pursuant to section 250B Residential Tenancies Act 1997, that is, on the grounds that the tenant committed a prescribed indictable offence on the rented premises or in a common area.
2. The application is dismissed because I am not satisfied that the offences that the tenant has committed on the rented premises are prescribed indictable offences because there are no indictable offences prescribed by regulation.

Background

3. The rented premises are owned by the Director of Housing. The tenancy agreement specifies the landlord as Loddon Mallee Housing Services Ltd trading as Haven: Home Safe. There is a Memorandum of Understanding between the Director of Housing and Loddon Mallee Housing Services Ltd whereby they manage the rented premises on behalf of the Director of Housing. The application made to the Tribunal specifies the landlord, applicant as Haven: Home Safe.
4. At the time of the hearing before the Tribunal on 7 April 2015 the tenant was in custody at the Melbourne Remand Centre. The Tribunal had tried to make arrangements for the tenant to appear by way of telephone or remote facility however the tenant did not appear.

250B Prescribed indictable offences in public housing

5. The Director of Housing may give a tenant a notice to vacate rented premises of which the Director of Housing is the landlord if the tenant has committed a prescribed indictable offence on the rented premises or in a common area.
6. The notice must specify a termination date that is not less than 14 days after the date on which the notice is given.
7. To avoid doubt, nothing in this section is to be taken to mean that the Director of Housing may only give a tenant a notice to vacate in respect of a prescribed indictable offence if the tenant has been convicted or found guilty of that offence.”

Findings of fact

8. The tenancy commenced on 28 July 2014. Stolen goods and explosives were seized by police at the rented premises on 25 November 2014 during the tenancy. The tenant was present during the police search at the premises and he made admissions that he had handled stolen goods and possessed explosives on the rented premises, the indictable offences with which he was subsequently charged.
9. Upon hearing sworn evidence from Detective Senior Constable Higgs of Macedon Ranges Criminal Investigation Unit I made findings of fact which are set out in the order I made on 7 April 2015. They are that the tenant during the course of living at the rented premises handled stolen goods and possessed explosives on the premises. Both of these offences are indictable offences set out in the Crimes Act 1958. I find that the tenant committed indictable offences on the rented premises.

What are prescribed indictable offences?

10. Ms Batrouney who appeared on behalf of the landlord submitted that if an indictable offence is prescribed by any legislation it is an indictable offence within the meaning of section 250B of the Act. The thrust of her argument was that as these offences were offences under the Crimes Act 1958 that is sufficient for the purposes of section 250B. I allowed Ms Batrouney the opportunity to provide written submissions in support within 28 days of 7 April 2015 as to the meaning of "prescribed indictable offences". No written submissions have been received by the Tribunal.
11. There are no regulations which prescribe indictable offences for the purpose section 250B. This section together with section 250A of the Act came into operation on 31 May 2011 by virtue of the Residential Tenancies Amendment (Public Housing) Act 2011.
12. The purpose of the amendments as set out in the purpose section of the amending Act which is to provide that the Director of Housing may give a tenant a notice to vacate certain rented premises for carrying out certain illegal acts on those premises or in common areas.
13. The Minister's second reading speech and the Minister's Statement of Compatibility both point to Parliament's intention that indictable offences should be prescribed by regulation.
14. I note the following extract from the Minister's second reading speech:
"The Bill will address these shortcomings in the Act by ensuring that the Director may issue a tenant with a notice to vacate the premises after at least 14 days, where the Director is reasonably satisfied that the tenant has

engaged in certain illegal drug activities, including drug trafficking, manufacturing and cultivation, or if the tenant has carried out other indictable offences prescribed by the regulations, in his or her rented premises or in the common areas.”

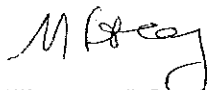
15. The issue of what indictable offences are contemplated by section 250B is further referred to in Minister’s Statement of Compatibility with Human Rights:

“The bill will also enable the Director to evict a tenant after at least 14 days notice if the Director reasonably believes the tenant has committed an indictable offence which is prescribed by the regulations.

This is an important means of addressing other serious illegal activities as the need arises. These will be indictable offences that have been identified as impacting negatively on the Director, or the safety, security and wellbeing of the Director's tenants.

Indictable offences may be prescribed by the regulations. This will provide the government with the power to make regulations which allow the Director to promptly address any serious future safety concerns on public housing estates. The threshold has been set at 'indictable' offences to ensure only the most serious crimes are targeted by any future regulations.”

16. It is clear from these extracts that Parliament contemplated that there may be regulations made after the amendments came into operation specifying prescribed indictable offences under section 250B of the Act. It was not Parliament’s intention that all indictable offences would be the subject of section 250B of the Act, only those that are prescribed by regulation. The section uses the word “prescribed”, no indictable offences have been prescribed by regulations.



M. Harvey, Member
29 May 2015

