

Residential Tenancies Act Review
Consumer Affairs Victoria
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To the Residential Tenancies Act Review,

Addendum to TUV Security of Tenure Issues Paper submission

Tenants Union of Victoria (TUV) wishes to submit an additional recommendation in response to the Security of Tenure Issues Paper. The recommendation is concerned with the information provided in notices to vacate and the impact this has on security of tenure.

According to section 319a of the *Residential Tenancies Act 1997* (RTA) a Notice to Vacate must be in a prescribed form. This form is outlined in the Residential Tenancies Regulations 2008. The information that is of concern is contained in point 13 of the prescribed form which states:

“13. Tenant please note: If you receive a notice to vacate, you may apply to the Victorian Civil and Administrative Tribunal to challenge the validity of the notice. An application must be made to the Tribunal within 30 days after the notice to vacate is given.”

This statement provides vital information to the tenant who may otherwise be unaware of their rights under the RTA. The statement lets the tenant know that they are entitled to challenge the validity of the notice.

Receiving a notice to vacate can be a highly stressful and emotionally taxing situation, and often comes during an already chaotic time in a tenant’s life. The provision of clear and useful information is of utmost importance to ensure tenants are able to avoid unfair or unnecessary eviction.

Despite the inclusion of point 13 in the prescribed Notice to Vacate, many Notices do not include this statement. The Notices to Vacate that are generated through VCAT Online, for example, do not include the point 13. Instead they use the following statement:

“Tenants please note: If you want help with this notice, then ring the Consumer Affairs Victoria on 1300 55 8181.”

The above is far less clear and does not specify that the validity of the notice can be challenged. A tenant, unfamiliar with the system, may not understand in which circumstances they should contact Consumer Affairs or that this may assist them to stay in their home for longer.

Despite this substitution seriously hampering tenants' rights to question the validity of a Notice to Vacate, the Supreme Court has found that it is acceptable to deviate from the prescribed form in this way (Rowson v McClure and VCAT 2013).

The TUV has found that the substitution described above has caused tenants to leave their homes unnecessarily. TUV recently assisted in a matter where the tenant received a Notice to Vacate that had been generated by VCAT Online. Due to the inadequate information provided they did not realise that they could challenge the notice. The tenant was afraid that the policy would turn up at their home to evict them. As a result they vacated their home on Christmas day and was homeless during the holiday period.

TUV contends that there needs to be an amendment to Notices to Vacate that are generated through VCAT Online as they do not comply with the prescribed form as detailed in the Residential Tenancies Regulations 2008. There is no reason why they should not include the prescribed statement under number 13.

Further TUV recommends that the prescribed notice be amended to further clarify the information provided to tenants, and to ensure that tenants fully understand their rights and responsibilities. To do this the point 13 should be amended to state:

"Tenants please note: If you do not leave on the termination date specified, the landlord must apply to VCAT to obtain a possession order before you can be evicted. If you believe that you have a lawful defence to the landlord seeking a possession order, you may raise this at the possession order hearing.

You are not required to leave until VCAT gives the landlord a possession order.

You may wish to contact Consumer Affairs Victoria for further information on 1300 55 8181."

The above gives the tenant a clearer picture of the eviction process and their rights under the RTA. It also gives them the option to seek further advice if required.

Yours sincerely,



Mark O'Brien
Chief Executive Officer
Tenants Union of Victoria