

21 December 2015

Residential Tenancies Act Review – Fairer Safer Housing  
Security of Tenure Issue Paper

By email: [yoursay@fairersaferhousing.vic.gov.au](mailto:yoursay@fairersaferhousing.vic.gov.au)

Dear Sir / Madam,

***Submission of the Barwon Community Legal Service to the Fairer Safer Housing Review - Security of Tenure 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.

## Introduction

- The Barwon, South-West area in which BCLS operates covers a very large catchment and includes a range of rental options. Some rental options are very remote with limited or no access to public transport, community services or reliable internet services. Others are in closer proximity to Geelong – a major regional town where the above services are more readily accessible.
- The catchment also sees BCLS deal with a wide variety of tenants and residents – ranging from families who are looking for longer term, secure tenancies to students looking for 6–12 month flexible tenancies.
- Deakin University, located in Geelong and Warrnambool, sees a large amount of students, often from outside of the catchment, with a number from overseas, relocate for studies. Many students rent with other students or rent a room in a rooming house, but are normally subject to a lease agreement. Due to having 5 or more students in the one house, ongoing issues of co-tenant disputes arise.
- In addition to this, Geelong has had a few major organisations relocate in the last few years, bringing workers and their families to the region.
- All of these tenants and residents have unique needs in what they are seeking from a tenancy agreement.

## Security of Tenure

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015.

*The social, emotional and economic cost of moving home is great. With no breach or other wrongdoing on their part, tenants may be expected to pick up their life's belongings, find new accommodation, ask friends to help them move and find the funds to do so after being sent a Notice to Vacate for no specified reason. These notices give a tenant 120 days and can only be challenged on limited grounds, that being the notice is incorrectly filled out and hence invalid or if it was given in response to the exercise, or proposed exercise, by the tenant of a right under this Residential Tenancies Act 1997.*

*120 day notices to vacate do not assist a tenant with any security of tenure. We submit these notices should be removed from the legislation. Alternatively, if it is considered not appropriate to remove them, the grounds upon which they can be challenged should be expanded. Furthermore, a prohibition, for an extended period of time, on issuing a further no reason notice should be implemented if a tenant successfully challenges a no reason notice as being retaliatory.*

**Importance of security of tenure and needs and preferences of security of tenure in the Victorian rental market.**

- There is a balancing act between the costs of purchasing a property compared with paying lease costs. In addition, a mortgage is likely to tie you to that property for a longer period of time and does not offer the same flexibility as renting.
- As referred to above, some people are only living in the area on a transitional basis – they are looking for shorter term, flexible arrangements. The present market (with 6 and 12 month leases being common) caters well to this group.
- However, families or individuals who are looking at living in the region for longer periods of time may not be able to afford, or want, to purchase a house. They will want additional security of tenure and not have to incur the costs and stress of moving house every 12 months.
- Longer term leases would address concerns and possible costs of moving.
- When a property is advertised it could indicate if the landlord or operator is seeking short or long term tenants. This would help balance the needs of both tenants and landlords and take into account their needs.
- It is important for landlords to have a reliable source of income from a rental property. This would further encourage other people, who are in a position to do so, to be investing in the rental market.

## COMMUNITY LEGAL SERVICE

- If there are adequate properties available on the market it would help prevent tenants having to accept sub-standard properties and unreasonable rent inflation due to heavy under supply of properties.
- Our client base reveals a much higher number of tenancies ending due to notices to vacate or eviction than compared to 'Victorian Private Market Renters: 2015 Full Report from the Tenants Union of Victoria'. Clients often approach our service for assistance once they have received a notice to vacate for rent arrears or are struggling to get repairs undertaken and are wanting to leave.
- Our clients are regularly faced with financial, family violence or co-tenant dispute issues that have an effect upon their tenancy.
- The legislation also needs to address residents in caravan parks and moveable dwellings, especially in regards to moveable dwellings residents who face very large costs in moving their dwelling.

**Preferences of landlords and prospective property investors**

- BCLS only assists tenants or residents in tenancy disputes but understands many landlords are small scale property investors.
- Any legislation would have to balance the needs of landlords and possible changes to their circumstances. Many small scale property investors do not have large financial reserves to have properties sit vacant for long periods of time and occasionally capital needs to be raised from the property.
- The balance would also need to take into account security of tenure for any tenants so they have some certainty about their own living arrangements. As with landlords, situations change for tenants and legislation needs to reflect this. Current provisions in regards to reduction of fixed term tenancies and the family violence provisions start to address this. Please see below for further input regarding family violence matters.

### **What is offered in the Victorian rental market and matching tenant and landlords preferences for security of tenure**

- People are living in rooming houses, caravan parks and residential parks for longer periods of time – the current legislation doesn't reflect this, however, it is noted in the issue paper.
- An issue BCLS sees on a regular basis is where students are living in large residential dwellings that are deemed rooming houses. Many times you have 5 or more students in the house and they are regularly subject to individual leases for their respective room. Issues arise where there are disputes between students or study commitments change. This places students in a very hard situation where they are faced with potentially large lease break costs and limited options to find other students to take over their lease once the semester has started.

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015.

*Disputes between co-tenants / expansion of Residential Tenancies List jurisdiction – The RTA should be amended to allow tenants to make an application to the VCAT for a determination of disputes between co-tenants. At present, there are limited options available to tenants when these disputes arise.*

*The Dispute Settlement Centre of Victoria offers mediation, but requires voluntary consent of both parties. There are limited services, beyond paid legal service, that can offer advice. The Residential Tenancies List of VCAT is an appropriate jurisdiction to deal with matters of this nature. It already deals with tenant vie tenant disputes in a limited capacity through the intervention order provisions of the RTA.*

*Currently, the only enforceable jurisdictions that can hear these matters are the Courts, most commonly the Magistrates' Court. The majority of tenant vie tenant disputes are over limited monetary amounts. An amendment to allow this type of dispute to be heard would still be subject to the Residential Tenancies List \$10,000.00 limit, however, for smaller claims it is substantially more accessible than the Courts. The Court has higher costs in regards to filing fees and considerably more formalities.*

*If the Residential Tenancies List was able to hear these matters, evidence and burdens of proof would also be very similar to those already relied upon. Balancing some of the disadvantages, including an increase on the limited resources of VCAT, would need to be considered.*

*The Residential Tenancies List could further be expanded in its jurisdiction to deal with all matters relating to rentals, including those of licences and home stay arrangements which can face similar jurisdictional issues to tenant vie tenant matters.*

- A further issue BCLS sees amongst many of our clients is rental stress. This is especially true for clients that are unable to access Department of Housing or Community Housing and rely upon the private rental market. Often our clients have little or no money left in their weekly budget and rent arrears issues commonly arise if any unplanned events occur, for example, medical expenses.
- Further to financial stress, many clients BCLS assist are faced with additional hardships or vulnerabilities. This can range from mental health, age, limited English, disabilities and family violence. The legislation needs to be flexible and reflect that many of these people may from time to time fall into arrears or have to end a lease early. Understandably, it needs to balance the needs of landlords as well.

- An example of how the legislation currently does this is VCAT's discretion to enable a tenant to enter into a payment plan for rent arrears matters. This allows a tenant to continue the tenancy and helps ensure the landlord still receives rent for the premises. If legislation can be further expanded to enable a degree of flexibility it will help people already in very difficult situations address issues without the worry of facing homelessness as well.

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015.

*Jurisdiction of Magistrates' Court – FVIO matters –*

*In 2014 BCLS acted in over 500 family violence cases. In Geelong there has been a staggering 122 percent increase in the number of family violence incidents per 100,000 in the last five years. Worse still is the Colac area with a staggering 340 percent increase in family violence incidents. This is compared to a 72 percent increase across Victoria. These statistics reflect the huge issue our region is facing and both Geelong and Colac form part of the catchment area in which BCLS assists with tenancy matters.*

*A delay of up to 8 weeks or more can occur between the time a person makes an application for an intervention order and its conclusion. At present, a lease can only be changed under the family violence provisions by VCAT on the basis of a Final Order being made. Our view is that the Magistrates' Court should be empowered to deal with leases under the family violence provisions of the RTA. This would allow the lease to be dealt with at the first hearing of the intervention order application. It would ensure applicants do not have to make multiple applications to deal with the family violence and its related impacts, including changing a lease agreement due to fleeing the rental property or having another tenant excluded.*

*The RTA could further expand / change its definition to ensure either the Courts or VCAT have the power to consider applications to change a lease at an earlier stage, prior to a final intervention order being made. These provisions could be similar to those contained in the Residential Tenancies and Rooming Accommodation Act 2008 (QLD), sections 245 and 246.*

### **Provisions for security of tenure and lease terms**

- The current legislation does not cover long term (in excess of 5 years) leases. However, industry practice appears to discourage longer leases as these would not be subject to multiple re-letting fees.
- Not all tenants will want a long term lease, but as discussed above, for some the option will give them security and the legislation should enable this.
- BCLS has seen clients that have been in properties for well over 5 years but only had an original 12 month lease and then a periodic, month to month, agreement. This exposes them to no reason notices to vacate and effects certainty about how much longer they may be living in the property.
- A further effect of this is that many tenants are reluctant to raise repair issues for fear they may be 'kicked out'.
- The current legislation also makes it difficult for people living with disabilities or special needs. It both requires the landlords consent, the property to be returned to the state it was in before any modification, whilst also not providing ongoing security of tenure. The costs of some special need modifications are very high and if these have to be done and then removed and the property repaired in a short period of time it becomes unviable. This is not to say a landlord should bear the costs of reinstating the property but by allowing a tenant with special needs to have a long lease the costs to them can be spread over a period of time.

### Terminations

- Again, a balancing act between the risk to landlords and security of tenure needs to be addressed.
- No reason notices to vacate do not assist a tenant with any security of tenure, as discussed above. They are a source of stress for tenants and often stop tenants exercising their rights due to the fear that a no reason notice will be issued.
- It would be hard for the legislation to address all possible reasons a notice may be given, however, by having an effective mechanism to remove tenants that do not comply with the tenancy agreement and VCAT's discretion under the reduction of fixed term tenancy agreement provisions, a landlord's concerns should be alleviated.
- Further to this, it is normally beneficial to both parties that a tenancy continues. A tenant needs a secure dwelling to reside and does not want to be faced with the stress and costs of constantly moving. A landlord often needs the security of a regular income from their investment. Legislation should be trying to sustain tenancies where possible. Mediation at the direction of VCAT could possibly help tenancies to continue where a relationship has soured.

### Rent increases

- Rent increases should reflect the costs incurred by landlords through rates and service charges as well as property values. Tenants, however, need some certainty about how much they will be paying to enable them to adequately budget. These issues become more pronounced over longer lease periods.
- It would be unfair on a tenant who has signed up to a long term lease to be subject to rent increases that are not calculable or tied to something from the onset of the lease.

- This issue can be overcome if rent increases were calculated at the start of the tenancy as x% per 12 month period or at least tied to something that reflects relevant costs like the consumer price index.
- Further to this, a limit on the amount that rent can increase over a given period would provide tenants with a degree of certainty.
- Alternatively, if provisions, such as those suggested above, were not included notice periods before rent increases should be extended and a tenant given the options to discontinue the lease without penalty for longer term leases.

### **Repairs, maintenance and modifications**

- Improved dispute resolution mechanisms for repairs and maintenance issues need to be introduced. The current practice is not well utilised by tenants in regards to repairs as they are often scared they will be 'kicked out' if they try to assert their rights.
- BCLS regularly sees clients that have had repair issues outstanding for a prolonged period of time. For example, these repair issues have included severe mould, holes in the roof allowing the elements to enter the residence and broken utilities, such as ovens or heaters. Many clients have put up with these and similar problems as the property they are residing in is at the more affordable end of the market and they are facing homelessness if they do not maintain the tenancy.
- Another major issue in regards to repairs is the time frame and current process for non-urgent repairs. Many tenants give up on the process and simply put up with the problem.
- A simplified process and enforcement of penalty provisions would help address these issues and ensure landlords are held to their duties under the legislation.
- When a tenant improves the property, with agreement of the landlord, some security of tenure should be afforded to them. This is similar to what is discussed above in regards to modifications.

**Rooming houses, caravan parks & residential parks**

The above discussion, although focussed upon residential tenancies agreements, should apply with relevant modifications to rooming houses, caravan parks and residential parks.

**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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