

Dispute resolution

Review of the Residential Tenancies Act 1997

Summary of responses to the issues paper, *Dispute resolution*.

Five respondents identified data considered important when reviewing a dispute resolution system:

- The number of disputes that are awarded in favour of tenants or landlords to determine whether there is an imbalance in the number of cases being awarded to one party or another (one landlord/agent representative organisation and one landlord).
- The proportion of people who follow through to dispute resolution after seeking advice and why, to determine if the advice services are effective (one landlord/agent representative organisation and one support service).
- Feedback about whether tenants and landlords find services such as the RentRight¹ app helpful (one support service).

More than two respondents suggested improvements to the dispute resolution system for vulnerable and disadvantaged tenants:

- Increase funding to services that provide legal support to tenants in dispute resolution (three support services, one landlord/agent representative organisation and one landlord).
- Create concessions for those with no means to pay for dispute resolution processes (two tenant representative organisations and one tenant).
- Ensure all communication materials and forms meet accessibility requirements for people with a disability. For example, 'easy' English, large print, and Auslan formats (one support service and State Government agency or entity).

An online quick poll asked landlords the nature of their most recent dispute with a tenant, and received 91 responses. *Figure 6* illustrates that rent payment was the most common cause of disputes.

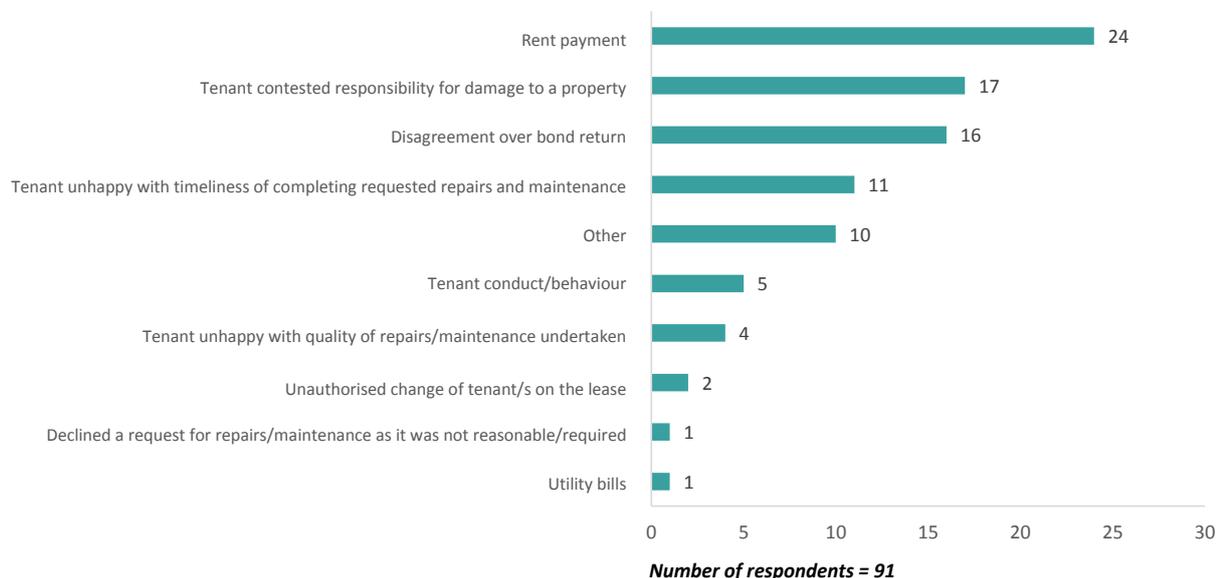
Theme 3: Information and advice services

Respondents commonly said the information and advice services provided by Consumer Affairs Victoria (CAV), Dispute Settlement Centre Victoria (DSCV), Tenancy Advice and Advocacy Program (TAAP) and other agencies would be more effective if they were better known and accessed by tenants (five tenants, four support services, one landlord and one landlord representative).

Suggested improvements to the information and advice services were:

- List all dispute resolution services available by locality or region on the CAV website (one tenant and one tenant representative organisation).
- Improve the RentRight¹ app with links to relevant services (one support service).
- Include dispute resolution information as part of a lease (two tenant representatives), as part of a notice of hearing (one support service) and as part of the 'Renting A Home - A Guide For Tenants' (one landlord).
- Increase funding to information and advice services who work with vulnerable and disadvantaged tenants (five support services and three tenant representative organisations).
- Link information and advice services with community organisations in order to better engage Culturally and Linguistically Diverse (CALD) communities and the elderly (two support services, two tenant representatives and one State Government agency or entity).

Figure 6: Quick Poll – Landlords, what was the nature of your most recent dispute with a tenant?



¹ RentRight is a smartphone application with information and tools for tenants and landlords (accessible via consumer.vic.gov.au).

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One landlord and three landlord/agent representatives highlighted that landlords do not receive adequate support and advice under the current system as they may only contact CAV.

Recommendations to evaluate the effectiveness of the information and advice services currently offered:

- CAV conduct an internal review to assess whether vulnerable tenants are identified and referred to TAAP services (four support services).
- Assess whether the advice being provided by CAV differs from that provided by TAAP organisations (two tenant representative organisations).

Respondents often said that education about the dispute resolution process would reduce the number of disputes for vulnerable tenants (two support services, one tenant representative and one tenant).

Theme 4: Independent third-party assistance

Tenancy Advice and Advocacy Program services:

- Respondents overwhelmingly recognised the third-party assistance mechanisms provided by TAAP as most effective, and asserted they should receive greater funding (four support services, two tenant representative organisation, one landlord/agent representative, one landlord and one tenant).
- Conversely, one landlord/agent stated that TAAP services often advised tenants to take adversarial actions against landlords rather than assisting them to constructively resolve disputes with landlords.

Dispute Settlement Centre Victoria services:

- Respondents commonly suggested that DSCV services were underutilised, as the process was voluntary and non-binding (four support services two tenant representative organisations and three landlord/agent representative).
- Conversely, two respondents suggested DSCV was an effective mechanism for co-tenant disputes and for producing payment plans when rent is in arrears (one support service and one tenant representative organisation).

Respondents identified relevant services that assist with residential tenancies disputes:

- Property managers (one landlord/agent representative)
- Real Estate Institution of Victoria (REIV) (one landlord/agent representative)
- Community and charitable groups (one support service)
- Legal help line (one support service).

Theme 5: CAV inspections

Respondents had the following mixed views about CAV inspections:

- Two respondents believe CAV's inspections are the best method available for dispute resolution (two landlord/agent representatives).
- Three respondents suggested CAV's inspections need a more consistent and transparent approach as they believe inspection reports are not conclusive and do not help resolve disputes (two tenant representatives and one landlord).
- Two respondents believe CAV often over values furniture left behind, resulting in landlords having to store inexpensive furniture (one landlord and one landlord/agent representative).
- Two respondents stated that in cases of family violence, CAV's inspections play a vital role in valuing and storing goods (two support services and one tenant representative organisation).

Respondent suggestions for improving CAV inspections were:

- Conduct inspections in a shorter timeframe, for example 7-12 days (two landlord representatives, one landlord, three support services and one tenant representative).
- Make inspections binding, as currently CAV's recommendations are commonly not enforced (two tenant representatives, support service and one landlord/agent representative).
- Ensure that CAV's inspections play a greater role in distributing information on available services to vulnerable and disadvantaged tenants (two support services).

Theme 6: Victorian Civil and Administrative Tribunal (VCAT)

Respondents focussed on issues and obstacles with VCAT hearings, in particular:

- Landlords and landlord/agent representative organisations overwhelmingly believe that VCAT is biased towards tenants (nine landlords, four landlord/agent representative organisations, and two agents). They believe tenants are required to provide less evidence, have more support services available to them, and are more likely to have a decision made in their favour.
- Resolving a dispute at VCAT is often a long process, particularly when hearings are postponed (four landlords, three landlord/agent representative organisations, one agent and one tenant).
- VCAT decisions are often inconsistent with the legislation in the Act (two landlords, three agents, two landlord/agent representative organisations and one tenant representative organisation).

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- The only way to appeal a VCAT decision is to go to the Supreme Court, which is considered prohibitively expensive (three tenant representative organisations, two landlords, two support services, one tenant and one landlord/agent representative organisation).
- It is very difficult to enforce VCAT decisions, particularly non-monetary orders (three landlords, two support services, one tenant representative organisation, one landlord/agent representative organisation and VCAT). This is because:
 - Police often do not know their responsibilities for effecting orders made under the Residential Tenancies Act (such as orders for possession, notices to leave for violence on managed premises).
 - The Magistrates Court is an expensive and time consuming process for enforcing monetary compliance (one landlord, landlord/agent representative organisation, one tenant representative organisation and one support service).

Respondents identified three key obstacles to landlords and tenants taking disputes to VCAT:

- Taking time off work and/or travel to hearings is a significant barrier for tenants and landlords (five tenants, two landlords, two tenant representative organisations, two landlord/agent representative organisations and VCAT).
- The perceived benefit of having legal representation at VCAT, particularly for tenants who must defend themselves against agents acting on the behalf of the landlord, who have a strong working knowledge of the Act (four tenant representative organisations, a support service, State Government agency or entity and tenant).
- The formal nature of VCAT. Respondents described VCAT as adversarial and intimidating, especially for vulnerable tenants (three support services, three tenant representative organisations, one landlord/representative organisation and a landlord).

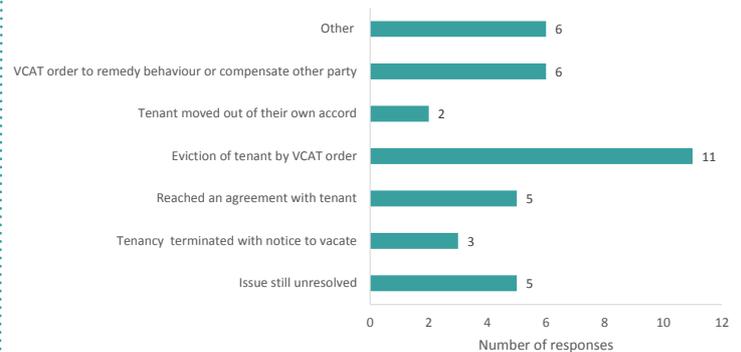
Respondents provided several suggestions for improving VCAT services. The suggestions made by three or more respondents were:

- VCAT should have an internal review process (five support services, two tenant representative organisations and one landlord/agent representative organisation).
- Train staff at VCAT in cultural awareness and how to communicate with refugees and ensure translators are always present (two tenant representative organisations, State Government agency or entity and one support service).
- The notice for the hearings could be improved. It was suggested that all parties should be notified and reminded of hearing dates via phone. Additionally, all notices should include referral information about legal support services (four support services, and one tenant representative organisation).
- VCAT fees should be waived (two support services and two tenant representative organisations).

- Other modes of attending VCAT hearings, for example Skype, should be explored (two support services and one tenant representative organisation).

An online quick poll asked landlords if they had been involved in a rental dispute and how was it resolved, and received 38 responses. *Figure 7*, illustrates that most disputes were resolved with an eviction of the tenant by VCAT order.

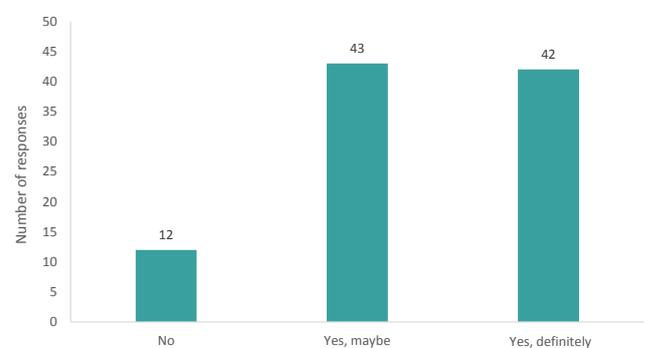
Figure 7: Quick Poll - Landlords, if you have been involved in a rental dispute how was it resolved?



(Number of respondents = 38)

An online quick poll asked landlords if they were involved in a dispute with a tenant would they consider using a dispute resolution that is less formal than VCAT, and received 85 responses. *Figure 8*, illustrates that nearly all landlords responded yes, but were split between yes, maybe and yes, definitely.

Figure 8: Quick Poll - Landlords, if you were involved in a dispute with a tenant, would you consider using a dispute resolution option that is less formal than VCAT?



(Number of respondents = 97)

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Theme 7: Sector-wide compliance and enforcement of dispute resolutions

Some respondents feel that CAV's compliance and enforcement functions are ineffective and rarely used (six respondents, two support services, two tenant representative organisations, and two landlord/agent representative organisations).

A tenant representative organisation believes the low number of inspections is due to tenants not knowing that CAV conduct inspections and can enforce compliance.

Three support services and two tenant representative organisations want to see CAV issue more infringement notices and increase the penalties for not resolving disputes.

The issue of un-registered rooming houses was raised by four respondents (two tenant representative organisations and two landlord/agent representative organisations). They assert that CAV should focus resources on identifying and inspecting un-registered rooming houses rather than waiting for compliance issues to be brought to them.

Theme 8: Other dispute resolution models and mechanisms

The Issues Paper included descriptions of other dispute mechanisms and models used in other jurisdictions and sectors. Respondents were asked what models and mechanisms should be considered in Victoria. Responses are detailed in *Table 1*.

Table 1: Dispute resolution models and mechanisms in other jurisdictions and sectors that should be considered in Victoria..

Suggestions for alternative or additional mechanisms used by other states or sectors.	Respondent/s who support this suggestion	Advantages and disadvantages
A Tenancy Ombudsman	6 respondents: 2 landlord/agent representative organisations, 1 support service, 2 tenant representative organisation and 1 tenant.	<ul style="list-style-type: none"> • It would create a binding mediation system. • It would provide certainty in process. • It would address any power imbalances between the parties.
The 'FastTrack Resolution' process used in New Zealand.	8 respondents: 4 landlord/agent representative organisations, 3 support services and 1 landlord.	<ul style="list-style-type: none"> • This system appears quick and cheap. • Respondents want to see empirical evidence that this process is helping reduce the number of disputes without exacerbating any power imbalances between the parties.
Queensland: - Landlords do not have to go to VCAT to claim bond money. - Prevents legal representation at the Tribunal for either party. - Notice of unresolved disputes	3 respondents: 2 Landlord/agent representative organisations. 1 Support service.	<ul style="list-style-type: none"> • It would reduce the number of cases in VCAT. • It would create a level playing field for all parties. • It would minimise the amount of negotiations and paperwork.
The online dispute resolution system in British Columbia.	3 respondents: 2 support services and 1 tenant representative organisation.	<ul style="list-style-type: none"> • It would resolve distance and time issues with attending hearings. • It would disadvantage vulnerable and disadvantaged people who do not have ready access to the internet.
Having an internal appeal process at VCAT if there is a possible error in law, like NSW.	3 respondents: 2 tenant representative organisations and 1 support service.	<ul style="list-style-type: none"> • It would improve the consistency and integrity of VCAT decisions.

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Additional suggestions were:

- Fast tracking the re-opening of cases at VCAT (landlord/agent representative organisation).
- Creating a retirement housing ombudsman (one support service and one tenant representative organisation).
- Creating an ombudsman for Agent conduct (one support service).

The Issue Paper asked participants what features and considerations would be important for a compulsory mediation or conciliation step to effectively resolve disputes.

Features and considerations identified as important for compulsory mediation or conciliation:

- Four respondents believe compulsory mediation would be beneficial (two support services, one tenant representative organisation and VCAT).
- One respondent believes it would preserve the relationship between parties (one support service).
- Many respondents believe the mediation process would need to have binding agreements and tenants would need to have an advocate present. VCAT suggested compulsory conferencing as the best approach where the mediator can also play an informing role. They believe this would address the power imbalance between parties (two support services, one tenant representative organisation and VCAT).

- Three respondents believe compulsory mediation would be time consuming and not address the power imbalance between landlords and tenants (one landlord/agent representative organisation, one tenant representative organisation and one support service).
- One support service believes it would be better to increase funding for support and advocacy services that help tenants in dispute resolutions.
- Two respondents believe a centrally managed website or platform where all parties lodge their requests and any follow up steps as they happen would facilitate a quicker resolution (a tenant and landlord/agent representative organisation). This is because it would keep a transparent record of all communication and CAV could check in with parties at appropriate times to see if action had been taken.

