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Victoria's new renting rules – supporting clients to navigate the changes

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March 2021

Overview

1. New protection for evictions - the ‘reasonable and proportionate’ test
2. The new ‘5 strikes’ rental arrears process
3. Breach of duty and compliance issues
4. Options where there is family violence

Justice Connect Homeless Law

- Victoria's free community legal service for people experiencing or at risk of homelessness
- Areas of law include: tenancy (e.g. eviction prevention), fines, debts, criminal charges
- Use casework to inform our law reform + policy work
- Focus on sustaining tenancies for people in safe housing, and reducing legal barriers to people exiting homelessness

New protection for evictions - the ‘reasonable and proportionate’ test

The eviction process

Lawful eviction without a renter's consent	
Step 1	Issue and serve a **Notice to Vacate** on the renter/resident, specifying the section of the RTA that the rental provider is relying on and a vacate date
Step 2	If the renter does not vacate the premises, the rental provider makes an Application to **VCAT** for a **Possession Order**
Step 3	A **hearing** takes place at VCAT, and a possession order is made in respect of the premises
Step 4	The rental provider purchases a **Warrant of Possession** from VCAT
Step 5	The warrant of possession is **executed** by police and the renter is removed from the premises

The reasonable and proportionate test

Prior to evicting someone (making a possession order), the Tribunal must consider these factors:

- The **nature, frequency and duration of the conduct** of the renter, including whether it is a recurring breach of obligations under the tenancy agreement.
- Whether the **breach is trivial**.
- Whether the breach was caused by the conduct of any person other than the renter.
- Whether the renter has made an application for an intervention order and whether it was in force, contained an exclusion condition or other matters the Tribunal considers relevant.

The reasonable and proportionate test (cont)

- Whether the **breach has been remedied** as far as is practicable.
- Whether the renter has or will soon have **capacity to remedy the breach** and comply with their obligations under their rental agreement.
- The **effect of the conduct on others**.
- Whether any other order or course of action is reasonably available instead of making the possession order.
- As the case requires, the behaviour of the rental provider or the rental provider’s agent;
- Any other matter the Tribunal considers relevant.

Case study: *Mikho v Burgess*

- **Facts**: The landlord applied to terminate tenancy on the basis that he had sold his home and was moving into the property
- **Issue** Was it reasonable and proportionate to make an order terminating the tenancy?
- **VCAT decision:** No, because terminating the tenancy "*would overwhelmingly be harsher on the tenants and their children than their landlord*"

Helping your client at VCAT

- VCAT will consider a large range of factors in the reasonable & proportionate test.
- You can help clients by providing supporting evidence, including:
  - evidence to show that your client has taken steps to remedy the breach or that they will be able to remedy the breach
  - a letter from medical professionals to explain how an eviction would impact on your client's mental or physical health
  - a letter from a support worker to explain how eviction would impact on your client, including whether they will be at risk of homelessness if evicted

Helping your client at VCAT

- You can help clients by providing supporting evidence, including:
  - if the alleged breach was caused by a person other than your client, evidence of any steps that have been taken to reduce the risk of future breaches (such as police reports, or copies of intervention orders) and
  - evidence of any important reason that your client remain housed in their current housing. This may include evidence of special supports in the area, specialist services that your client or their family utilise, cultural links to the area or modifications made to the home due to disability.

VCAT adjournments

VCAT will adjourn a hearing when there is need for the hearing to be postponed. However, VCAT is not generous in granting these without 'good cause'.

You can seek an adjournment two ways:

1. In writing (ideally with consent from the landlord) at least two business days prior to the hearing

2. At the hearing

Support workers can seek adjournments for their clients, including when when a client can't attend or they need further time to get legal help, but **be careful about appearing at a VCAT hearing without your client, as this will likely remove their right to review.**

The new arrears process

Rent arrears – 5 strikes

- A new “five strikes” rule applies to notices to vacate (NTV) for rental arrears.
- If a renter is more than 14 days in arrears, a rental provider can issue a notice to vacate.
- The renter does not need to leave the property by the termination date stated on the notice to vacate.
- If this is 1st-4th notice to vacate in a 12 month period, the renter pays the arrears by the termination date:
    - The notice to vacate ceases to have effect
    - VCAT must dismiss the application for a possession order

Rent arrears – 5 strikes

- If the renter does not pay the arrears by the termination date, then the landlord can apply for a possession order.
- If this is the 1st-4th notice to vacate, VCAT can refer the renter to financial counselling or make a payment plan.
- If this is the 5th notice to vacate, the landlord can go back to VCAT for a possession order. Note, the only protection for a renters if this is their fifth notice to vacate is the reasonable and proportionate test.
- The 12 month period resets every year on the renewal or anniversary of the rental agreement.

Helping your client with rental arrears

- If your client receives a notice to vacate for rental arrears, you can help them to offer a payment plan to the residential provider
- Justice Connect's Dear Landlord self help tool can help you or your client to generate a tailored letter to the residential provider asking for a payment plan
- If it is the 5th notice to vacate, there is a high risk of eviction, so you should refer your client for tenancy legal help
- If your client is facing financial hardship, consider helping them to access their nearest housing access point for financial assistance to pay rent (brokerage)
- Consider also whether a referral to a financial counsellor would be helpful.

Key legal and financial resources

- Dear Landlord: A free self-help tool for Victorian renters facing rental arrears – launching 29 March 2021
- Local community legal centres – go to Federation of Community Legal Centres website to find closest CLC
- Tenants Victoria -
- Victoria Legal Aid Legal Help - 1300 792 387
- Tenancy Assistance and Advocacy Program (TAAP) – go to Consumer Affairs Victoria website to find closest TAAP agency
- National Debt Helpline – 1800 007 007 – speak to a financial counsellor or find the closest financial counsellor
- Housing Access Points – for assistance with PRAP and HEF funding

Breach notices and compliance procedures

Duties of a tenant

A tenant must:

- Keep the rented premises **reasonably clean**
- **Allow entry** if the rental provider has issued the correct notice
- **Provide key** if changed the locks

A tenant must not:

- cause **nuisance**
- cause interference with the **reasonable peace, comfort or privacy** of any occupier of neighbouring premises (including visitors)
- **damage** the premises or common areas
- **make certain modifications** etc. without consent
- **interfere** with the operation of a safety device

Process for seeking compliance

Issue a breach of duty notice

Apply for a compliance order

Issue a Notice to Vacate

Apply for a Possession Order

Breach of duty notice

- **What can you do if your client gets a breach notice?**
  - Help your client understand the breach and how to remedy it.
  - Determine if the notice is valid:
    - Is it in writing, addressed to the person allegedly in breach and signed?
    - Does it specify the breach / details of the allegation and detail the loss or damage caused by the breach, not just the duty provision that the landlord thinks they are in breach of?
  - Challenge the breach notice if the tenant contests the allegations in the notice.

Notice for breach of duty to tenant/s of rented premises

Tenant's copy

Tenant details

1. This notice is given to: *(tenant/s names)*

2. Regarding the rented premises at: *(write address)*

3. Tenant/s address: *(if same address as 2, write 'as above')*

Landlord details

4. Landlord's name: *(cannot be an agent's)*

5. Address for serving documents: *(can be an agent's)*

6. Contact telephone numbers are:

Business hours:	
After hours:	

Reason for breach of duty notice

10. I believe you have breached your duty as a tenant because: *(write the section number and words from the opposite page)*

11. The loss or damage caused is:

12. Compensation or compliance required

    a) For breach of S60, S61, S63, S64, S70 or S89[S86(1)(a),(c),(f)] I require you to remedy the breach within 14 days after receiving this notice by:

or pay me compensation of: ($)	

OR

Compliance orders

- If a breach notice is not complied with, the residential provider may apply to VCAT for a compliance (or compensation) order.
- VCAT will make a compliance order if it is satisfied:

  a) That the person was **entitled** to give the breach notice; and

  b) The breach notice was **not complied with.**

- If a compliance order is made against a renter, the order **must** contain a warning that if the order is not complied with, the renter may be given a notice to vacate the rented premises

Eviction for breaches

- The residential provider may issue a Notice to Vacate for breaching a compliance order.
- Alternatively, a residential provider may issue a Notice to Vacate where the renter has previously received two breach notices for breaching the same duty, and they breach that duty a third time.

We encourage referring renters to legal help who have received an NTV on either of these grounds, as they require complex legal arguments to be made in order to protect the rights of a renter.

How to support clients with breach issues

- Help the client to understand the breach notice – do they understand what they are alleged to have done, do they agree with it?
- If the client doesn't agree that they have breached their duty, consider referral for legal help to challenge breach notice.
- If client does agree, consider what supports they may need to comply with the breach notice (eg, additional mental health support, intervention order if nuisance caused by family violence etc)
- Consider supporting evidence you could provide to the Tribunal if an application for a compliance order or eviction – regarding supports in place to prevent future breaches or mitigating circs.

Family violence provisions

Family violence provisions

- **Who can use them?**
- A party to the rental agreement (co-renter)
- A person who is not a party to the rental agreement but living in the property as their principal place of residence
- **In what circumstance?**
- Applicant is or has been subjected to family violence by a/another party to the agreement; OR
- Applicant is a protected person under a Personal Safety Intervention Order against a/another party to the agreement.

Family violence provisions

- **What can the Tribunal order?**
- **The Tribunal can make orders:**
  - Terminating a residential rental agreement/lease; or
  - Terminating an agreement and ordering a new agreement.
- **If the Tribunal makes those orders, they can also make orders:**
  - Determining the parties liability for rent, damage or outstanding utilities;
  - In relation to the bond;
  - Preventing a rental provider from listing the applicant on a tenancy database;
  - Allowing access for the removal of belongings.

Eviction for breach caused by family violence

- A notice to vacate can be challenged if breach or act giving rise to the notice was caused by a family violence perpetrator.
- Can also raise family violence as part of the reasonable and proportionate test
- Stronger protections against Tenancy database listings where family violence involved
- Renters can make some family violence related safety modifications without consent

How to support clients with family violence and tenancy issues

- Make sure that the person knows they have options in relation to the tenancy
- Refer to specialised tenancy legal help for assistance
- Consider what evidence you can provide in relation to the family violence (noting that there is a more flexible approach to evidentiary requirements)
- Consider referral to VCAT family violence worker who can help to ensure the hearing is safe and accessible

Any questions?

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