

Rights & responsibilities

Review of the Residential Tenancies Act 1997

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Overview

Fairer Safer Housing is a Victorian Government initiative to ensure that all Victorians have access to safe, affordable and secure housing. One of the key elements of the initiative is a review of the *Residential Tenancies Act 1997* (the Act).

The third of six issues papers explored issues relating to rights and responsibilities of landlords and tenants.

Who responded to this issues paper?*

A total of 476 individuals and organisations provided a response to the Issues Paper through four different channels. These channels included posting stories online, participating in online forums, providing written submissions and social media posts.

All together 73 submissions were provided by organisations and individuals. Most of the organisations were tenant or landlord/agent representative organisations. As illustrated in *Figure 1*, individual tenants were the largest participant group across all available channels, with 278 respondents (58 per cent). During the consultation period, information was accessed in a language other than English 420 times. The top three languages downloaded were Traditional Chinese, Russian and Dari. *Figure 2* illustrates that the majority of responses received, 378 (78.9 per cent), were made via social media.

Theme 1: Before a tenancy

Discrimination against tenants

Respondents identified reasons prospective tenants experience discrimination in application processes

- Have children. Landlords believe children cause greater wear and tear and place financial strain on the tenant (five tenants, one landlord, a tenant representative organisation and a housing provider).
- Have low incomes, including pensions and student payments (three tenant representative organisations, two tenants and a housing provider).
- Are from Culturally and Linguistically Diverse (CALD) or Aboriginal and Torres Strait Islander backgrounds (two tenant representative organisations, a housing provider and a support service).
- Are recent migrants or refugees with no previous rental records (tenant representative organisation, a housing provider and a tenant).
- Have a disability (a tenant, a support service and a housing provider).
- Have a pet (a housing provider and the RSPCA).

Figure 1: Stakeholder cohorts that responded to the issues paper

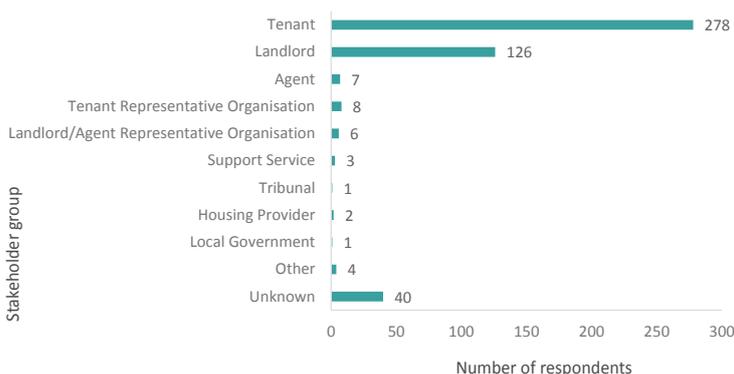
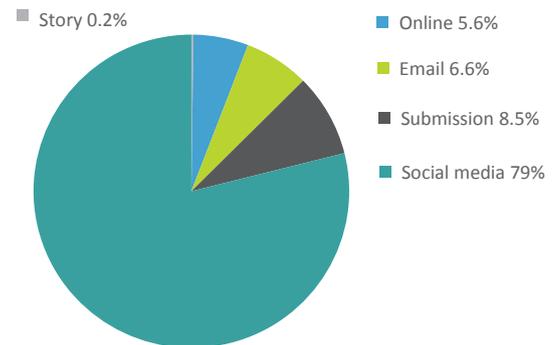


Figure 2: Methods stakeholders used to respond to the Issues Paper



The following comments were made by respondents on discrimination in application processes

- Short inspection timeframes (15 to 20 minutes) are a barrier for full time workers who cannot leave work to attend inspections (two tenants).
- A landlord and landlord/agent representative organisation disagreed that unlawful discrimination regularly occurs in tenant application processes.
- Two landlords, two landlord/agent representative organisations and an agent thought current provisions in the *Equal Opportunity Act 2010* provide adequate avenues for tenants to challenge discrimination.

Suggestions made for how tenants could be better informed of their rights under the *Equal Opportunity Act 2010*

- To improve the information tenants are provided in the 'Red Book'. This could include having more accessible language (plain English) and outlining the options of redress if tenants feel they have been discriminated against (three tenant representative organisations, a housing provider and a support service).

*The results of the consultation are not representative of the market but, rather, reflect current views about rights and responsibilities of landlords and tenants amongst the organisations and individuals who chose to participate. In addition, people who responded via social media and other online channels self-identified as either tenant or landlord.

Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

- That the Act should explicitly state that landlords cannot discriminate against tenants under the *Equal Opportunity Act 2010* (two housing providers and two tenant representative organisations).
- To provide all landlords with a guide about their obligations under the *Equal Opportunity Act 2010* (a tenant and an agent).

Five respondents however, believe that there is already sufficient information about the *Equal Opportunity Act 2010* available to tenants in the 'Red Book' and on the CAV website (four landlord/agent representative organisations and a housing provider).

Types of information landlords and agents are using to assess the suitability of tenants

- The primary information that landlords and agents look for in assessing the suitability of a tenant is their ability to pay rent and bills (four landlords, three tenants, two tenant representative organisations, a landlord/agent representative organisation and an agent). There were concerns that using a bank statement to assess a tenants' ability to pay rent is a breach of privacy.
- Rental history and references (two tenants, a landlord, a landlord/agent representative organisation, a tenant representative organisation and an agent).
- If tenants have a pet (two landlords and two tenants).
- How a tenant presents themselves at the inspection (two landlords and two tenants).
- For rooming houses and caravan parks, assessing whether the prospective resident will fit in with the existing residents is important (a landlord and a landlord representative organisation).

Having a standard application form

Overall, more respondents supported having a standard application form (14 respondents) than those who did not (5 respondents). Landlords, agents and their representative organisations were more likely to oppose a standard form than tenants, support services and tenant representative organisations.

Advantages identified that support a standard application

- A standard application form will make the application process more transparent and reduce discrimination (three tenant representative organisations, a tenant and a support service).
- It will make applications consistent for all properties and reduce the need for agents to request the same information multiple times (a tenant and a housing provider).

Disadvantages identified that oppose a standard application

- Properties covered by the Act vary too much for a standard application form. In particular, community housing organisations and rooming houses need to know more information than private rental properties (a landlord, a landlord/agent representative organisation and a housing provider).
- A standard application form will reduce the opportunity for competitive advantage between real estate agencies (an agent).

Using a security deposit

Respondents provided the following benefits and risks of landlords and agents requiring a security deposit from prospective tenants, to obtain a key to view premises.

Benefits

- Provides prospective tenants with more opportunity to view a property without being restricted by landlord/agent schedules (a support service and a housing provider).
- Having a security deposit is sensible practice to discourage people who are not genuine potential tenants and may want to burgle the property (a landlord and a landlord/agent representative organisation).

Risks

- It is poor practice to allow anyone to collect keys without a landlord or agent present, as it cannot be guaranteed that a copy of the keys were not cut so the person can return to the property to burgle it (an agent, a landlord/agent representative organisation and a housing provider).
- Landlord insurance will not cover any damage or property theft if keys are given to a person before a contract is signed (a landlord/agent representative organisation).
- Cash deposits are typically between \$50 – \$100. This cost can be prohibitive to low income tenants (a tenant representative organisation).



Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Tenancy databases

Respondents highlighted several issues with the current operation of tenancy databases. *Table 1* provides detail on the issues with tenancy databases and the suggested solutions by respondents.

Table 1: Issues and suggested solutions for the operation of tenancy databases.

Issues	Suggested solutions
Tenants have no access to the information listed about them on tenancy databases and therefore cannot object to incorrect information listed (two tenants, a housing provider, a tenant representative organisation and a support service).	Tenants should have fee-free access to check tenancy databases for information about themselves once a year (three tenant representative organisations and a landlord).
Tenancy databases are poorly regulated and not updated when a tenant complies with a VCAT order or proves hardship, such as family violence (three tenant representative organisations).	Victims of family violence should be able to remove their listings from the tenancy database (four tenant representative organisations).
Vulnerable people cannot access housing due to being blacklisted in the past, which can result in homelessness (a tenant representative organisation).	An independent body, for example VCAT, should review tenancy databases once a year and remove any incorrect listings, update records of compliance, and remove tenants who have three years of clear rental history (two tenant representative organisations and a tenant).
Current tenancy databases are primarily for agents and are difficult and expensive to access for private landlords (two landlords and a landlord/agent representative organisation).	Unlimited free access to tenancy databases for all landlords (two landlords and a landlord/agent representative organisation).
It is the responsibility of the landlord or agent to list tenants on databases; this can result in information not being listed, or agents saying they have listed tenants when they have not (two landlords and a tenant).	Any VCAT orders against a tenant should result in the tenant automatically being listed on a tenancy database (two landlords).
In contrast, two landlord/agent representative organisations, a landlord and an agent, feel strongly that the current privacy laws governing the use of tenancy databases, guarantee the protection of a tenant's personal information. They also expressed concern that any additional regulation would be a burden and discourage prospective landlords from renting out their property.	

A landlord database

The suggestion of a landlord/agent database was strongly supported, with 33 respondents in support. However, respondents' views varied in regards to the type of landlord/agent database or listing they thought would be appropriate.

The three options put forward were:

Option 1 – Have a landlord/agent database similar to tenancy databases, where any tenant can blacklist a landlord/agent. There was recognition that this database should be independently regulated (eight landlords, six tenants, a support service, a housing provider and an unknown respondent).

Option 2 – Create a star rating system for landlords and agents that all tenants could access (described as similar to the Uber star rating system). This would reward good behaviour as well as expose poor behaviour (four unknown respondents, two tenants, two landlords, and a landlord/agent representative organisation).

Option 3 – Rather than having tenants give subjective assessments, develop a public database of all past VCAT decisions on landlords, agents and tenants, which is automatically updated by the Tribunal (four tenants, two tenant representative organisations, a landlord/agent representative organisation and an agent).

Two landlords and a landlord/agent representative organisation disagreed with the suggestion for a landlord/agent database. They feel that a landlord's details should not be publicly accessible and that any database should not be paid for by the state government.

Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Information landlords should provide at the start of a tenancy

Respondents provided extensive suggestions about what additional information landlords should give to a tenant at the start of the tenancy.

Suggestions made by three or more respondents

- Any intention by the landlord to sell, build or move into the rental property within a few years (seven tenants, two agents, a support service and a housing provider).
- Details about appliances and utility connections, including where they are located and how to turn them on and off. In addition, are there any special details that tenants need be aware of, for example: is the gas metered and is internet connections provided? (four tenants, three landlords, three tenant representative organisations, a support service and a housing provider).
- Owners' corporation rules and regulations (three landlords, two landlord/agent representative organisations, a housing provider, a tenant and a support service).
- Certificates of prior servicing of electric and gas appliances (four tenants, a landlord, a tenant representative organisation and a support service).
- Any previous instances of mould and whether there is asbestos in the property (four tenants and a tenant representative organisation).
- Energy efficiency ratings for the property and appliances within it (four tenants and a tenant representative organisation).
- A list of recent repairs or replacements, including any ongoing repairs (two landlords, two tenants and an agent).
- An independent safety report confirming that the property is fit for habitation (three tenants).
- Receipts that the property has been cleaned before tenants move in (two tenants and a landlord).
- Details about garden maintenance (three tenants).
- Proof of the landlord's legal right to rent the property (a landlord/agent representative organisation, tenant representative organisation and a support service).
- The landlord's contact details even when a property is managed by an agent (VCAT, a support service and a tenant representative organisation).

In contrast, two landlord/agent representative organisations feel that requiring landlords to provide information in addition to the tenancy agreement and 'Red Book' would overwhelm tenants with too much paperwork.

Communication channels between landlords, tenants and agents

Respondents highlighted several issues with the current requirement to send documents via traditional post, particularly sending notices to vacate via registered post.

Other communications issues that were raised

- Landlords and landlord/agent representative organisations have found that while registered post can guarantee they have sent the document to a tenant, it does not guarantee that the tenant has received it; another housemate could sign for the post or a forwarding address could be incorrect.
- It is common for mail not to be delivered directly to individual residents in caravan parks; the operators must sign for it and hand deliver it to the residents.
- Melbourne University highlighted that many of their international students communicate with their landlords via text or Facebook because they have not been given any other contact details. This means that they cannot send 'breaches of duty' notices to their landlords.

Opinions about communicating and providing documents via post or electronic means varied between respondents

- The Act should allow electronic delivery of documents (three landlord/agent representative organisations, two tenants, a support service and VCAT).
- Tenants should be given the option to choose email as their preferred method of receiving notices (two support services, a landlord/agent representative organisation, a tenant and a tenant representative organisation).
- Electronic delivery of notices would have a negative effect on low income and elderly tenants who do not have reliable, or any access to electronic services (four tenant representative organisations, a support service and a housing provider).



Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Theme 2: During a tenancy

The current problems with the existing rights and responsibilities of landlords and tenants under the Act

Common issues related to the rights and responsibilities during a tenancy agreement

- Respondents consistently discussed issues or experiences with poor maintenance of the property by either the tenant or the landlord.
- The lack of a definition or guidance on ‘fair wear and tear’ of a property is the primary cause of disputes between a landlord and a tenant (two tenant representative organisations, VCAT and a support service).
- The responsibility for garden maintenance is commonly misunderstood between landlords and tenants (three tenants, an agent, a landlord and VCAT).
- Internet access, heating and cooling should be included as essential items in a rental property (two tenants and a housing provider).
- The Act does not include enough legal protection for balancing rights and responsibilities in share housing situations (a tenant and Flatmates.com).
- The Act does not address rent-to-buy option agreements and does not protect tenants if they choose not to buy (a tenant representative organisation).
- The description of nuisance ‘in any manner’ needs to be re-defined to provide more guidance about what nuisance is sufficiently inappropriate to warrant a breach of duty notice (two tenant representative organisations).

Improving breaches of duty provisions

Suggested length of time for remedying a breach of duty

- The current length of time for remedying a breach is too long. Five respondents would like to see the time reduced to seven days (two landlords, two landlord/agent representative organisations and a housing provider).
- The current timeframes are appropriate (two landlord/agent representative organisations, an agent and a support service).
- The timeframe for compliance is too short (one tenant representative organisation).

Respondents raised several concerns about current breach of duty notices

- It is common for agents and landlords to retaliate when tenants issue a breach of duty notice. This could include issuing a notice to vacate or giving a poor reference (six tenants and a tenant representative organisation).
- There needs to be more guidance on what constitutes a breach of duty, particularly breaches for cleanliness (a landlord and a tenant).
- Tenants cannot challenge the reasonableness of a breach. This is a concern because accruing three or more breaches is grounds for termination (two tenant representative organisations).
- The ‘three strikes’ approach with 14 day timeframes in-between, can make it a very lengthy process for a landlord to resolve a serious issue with a tenant; for example, causing a nuisance to neighbours (a landlord and a landlord/agent representative organisation).
- Compensation orders are not enforceable (a landlord).
- Agents should be more active in serving breach of duty notices and withholding rent payments from landlords who are not making repairs (two tenants).

Respondents had varying opinions about whether a person should have a choice to pay compensation or remedy a breach

- Paying compensation should only occur if someone has been given the opportunity to remedy a breach and failed (two landlords, two support services and a landlord/agent representative organisation).
- Tenants should be paying late fees for not paying their rent on time (two landlords).
- Landlords should have to pay compensation if they do not conduct repairs within the necessary timeframe (a landlord and a tenant).
- The person who is issuing the breach of duty notice should be able to choose between remedying a breach or paying compensation (an agent and VCAT).

Two agents, a landlord/agent representative organisation, a support service and a housing provider think that a mediation session should always be held to attempt to resolve breaches of duty disputes, before a hearing date is set at VCAT. However, one agent recommended the mediation be conducted by an independent moderator, not the agent.

Rights & responsibilities

Review of the Residential Tenancies Act 1997

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Tenancy agreements

Preference for prescribed tenancy agreements over a more comprehensive agreement

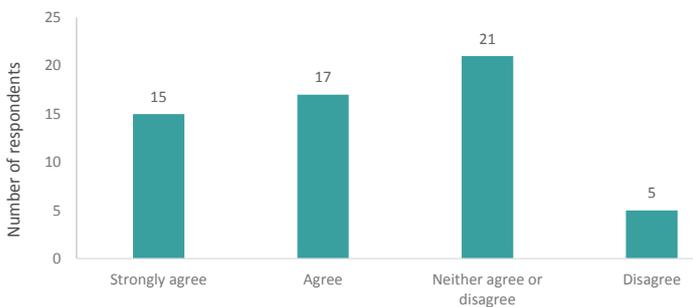
Respondents were divided in their preference for the current prescribed tenancy agreement or a more comprehensive agreement. The advantages and disadvantages they provided are detailed in *Table 2*.

Table 2: Advantages and disadvantages of prescribed and comprehensive tenancy agreements.

Type of tenancy agreement	Advantages	Disadvantages
Prescribed tenancy agreement	Is simple and clear, limiting onerous conditions, providing flexibility for non-general leases and is easy to understand, which is particularly important for tenants with limited English (two landlord/agent representative organisations, a support service, a tenant representative organisation, a housing provider and a landlord).	Any non-standard clauses are hard to enforce such as having no pets (a landlord/agent representative organisation).
Comprehensive tenancy agreement	More protective of human rights, providing clarity on key points of dispute and all provisions being enforceable (a tenant, a housing provider, a support service and a landlord/agent representative organisation).	The disadvantage is that the comprehensive agreement is onerous and can be difficult for people with limited English to understand (a landlord/agent representative organisation and landlord).

An online quick poll asked if the standard prescribed tenancy agreement should be longer, and set out the rights and responsibilities of landlords and tenants under the Act more comprehensively. The poll received 58 responses and *Figure 3* illustrates that the majority of respondents agree or strongly agree that the tenancy agreement should be longer.

Figure 3: Quick Poll – The standard prescribed tenancy agreement should be longer, setting out the rights and responsibilities of landlords and tenants under the Act more comprehensively?



Number of responses = 58

Having pets in rented premises

The rights and responsibilities around having pets in rental properties generated a lot of discussion. Respondents were consistent in their belief that there is a need to make changes to the Act with regards to pets.

Suggestions for provisions for pets in rental properties

- Landlords should not be able to unreasonably withhold consent for pets (seven tenants, five tenant representative organisations, two housing providers, a support service, a landlord and two other organisations). They suggested a provision similar to the one regarding unreasonably withholding consent for sub-letting.
- Landlords should maintain the right to refuse pets and that the

'no pets' provision should be enforceable throughout the tenancy (four landlord/agent representative organisations and three landlords).

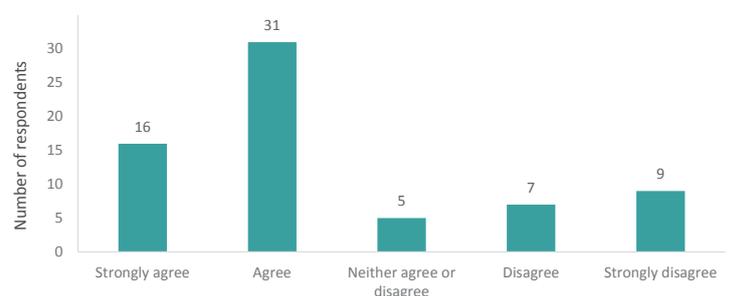
- All applications for tenants with pets should include references from previous agents and/or neighbours (three tenants, two landlords and two other organisations).

A pet bond was supported by 13 respondents (four tenants, three landlords, two tenant representative organisations, two other organisations, a support service and an unknown respondent).

However, seven respondents did not support the suggestion because they feel it would unfairly discriminate against lower income tenants (two tenant representative organisations, two housing providers, two support services and a tenant).

An online quick poll asked landlords, whether the ability to ask for an additional 'pet bond' to cover the costs of fumigation/pet-related damage would make them more likely to accept a tenant with pets. The poll received 68 responses and *Figure 4* shows that 69 per cent of respondents agree or strongly agreed with this proposal.

Figure 4: Quick Poll – Would a 'pet bond' provision to cover the cost of fumigation and damage make you more likely to accept a tenant with pets?



Number of responses = 68

Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Landlord's rights to enter a property

Feedback from respondents on the current rights for landlords to enter a rented property

- Current entry arrangements strike the right balance between landlord and tenant rights (three landlord/agent representative organisations, two landlords, a support service and a tenant).
- Landlords or agents are entering properties with no warning, or at a time not agreed with the tenant (six tenants, a tenant representative organisation and a support service).
- For routine inspections 24 hours' notice is too short (three tenant representative organisations and a housing provider).

Respondents want to see greater clarification on the following three aspects of landlord/agent rights to enter a property

- Clarification on the range of reasons landlords and agents can exercise a right of entry (a tenant, a support service and VCAT).
- Clarification on who is responsible for arranging tradesmen and supervising repairs (three tenants, two tenant representative organisations and VCAT).
- Clarification on a landlord/agent's right to assist police entering a property (a landlord, a landlord/agent representative organisation and a housing provider).

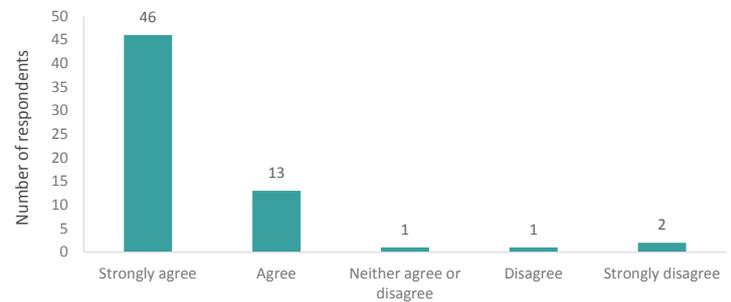
Agents and landlords taking photos of a tenant's personal belongings was an issue for many respondents (eleven tenants, three tenant representative organisations, two housing providers, two agents and a support service). Respondents feel that taking photos of a tenant's belongings is unnecessary when assessing the condition of a property and is an invasion of privacy.

Respondents had conflicting opinions in regards to selling a property whilst a tenant is still occupying the premises

- There should be more regulation about sale inspections (three tenant representative organisations, a housing provider, a support service and a tenant). Respondents think the number of inspections in a week should be limited and a maximum time allowance for an inspection set. If the landlord breaches these requirements, they should pay compensation to tenants.
- Regulating sale inspections could result in landlords evicting tenants earlier than they otherwise would have (two landlord/agent representative organisations and a landlord).

An online poll asked for the level of agreement on the statement, if a rental property is being sold while tenants are occupying the property, should there be a limit on the number of open for inspections that can be held per week. The poll received 63 responses. *Figure 5* illustrates that there was an overwhelming level of support (94 per cent) for limiting the number of inspections that can be held in a week.

Figure 5: If a rental property is being sold while tenants are occupying the property, there should be a limit on the number of open for inspections per week that can be held.



Number of responses = 63

Short term accommodation, subletting and assignment

The right for landlords to screen any person residing in their properties was supported by the majority of respondents (nine landlords, five landlord/agent representative organisations, two housing providers, a tenant and other organisation). This also applied to subletting and short term accommodation situations.

Only five respondents, three tenants, a landlord/agent representative organisation and a tenant representative organisation, believe that landlords do not have the right to determine a tenant's ability to live with another person.

Respondents highlighted several considerations for amendments to short term accommodation

- Airbnb agreements can be in breach of local council laws (two landlords and another organisation).
- Creating a 60-day minimum lease term would be detrimental to rooming houses where short term agreements are common (two landlord/agent representative organisations).
- Neighbours have the right to peaceful enjoyment of their property and have not consented to living next to an Airbnb property (two landlords).
- Short term agreements must be allowed if the landlord is the Director of Housing (a landlord/agent representative organisation, a housing provider and VCAT).

Rights & responsibilities

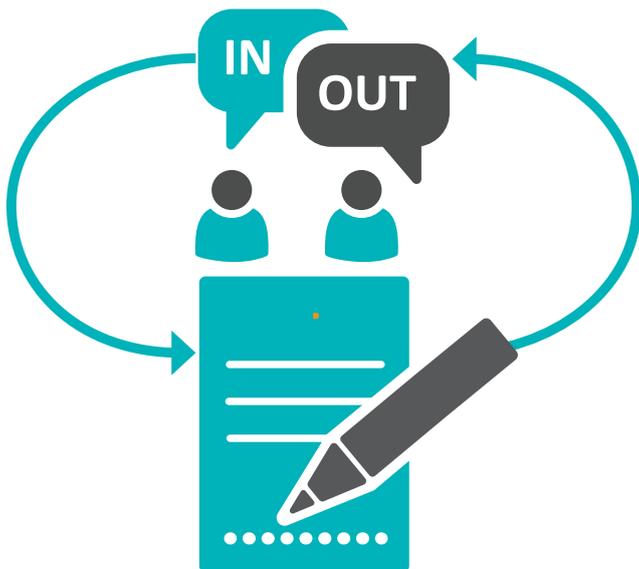
Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Respondents highlighted several considerations for any amendments to assigning or subletting agreements

- It is difficult to add a person to a lease or re-assign a lease; getting permission takes time, and the costs can be prohibitive. As a result, tenants often choose not to add a co-tenant to the lease exposing themselves to risk (two tenants, a support service, a housing provider and a tenant representative organisation).
- There is a need to clarify what subletting is, and the reasons a landlord can refuse permission in 'plain English' (a support service, a housing provider, a tenant representative organisation and VCAT).
- The Community Housing Federation of Victoria shared that subletting provisions can be detrimental to Aboriginal tenants who have 'strong cultural expectations of mutual support'.

Finally, three tenants and Flatemates.com reiterated that there are many legitimate reasons why a tenant may want or need to sublet and the right to do so, must be kept separate from short term accommodation amendments.



Theme 3: At the end of a tenancy

Notices to vacate

Respondents discussed the reasons for both landlords and tenants wanting to end a tenancy and the notice periods required. The following details the reasons that respondents provided for why a tenant and landlord should be permitted to terminate a tenancy.

Reasons why a tenant should be permitted to end a tenancy

- A tenant may end a tenancy agreement if a landlord has not maintained a minimum standard of care/maintenance (six tenants and a landlord).
- A tenant may end a tenancy agreement immediately in cases of family violence (a support service).
- A tenant that breaks a lease due to a landlord breach may have to prove relevant grounds to avoid landlord compensation at VCAT. In these cases, a tenant should be able to have a notice ratified without returning to VCAT (a support service and VCAT).
- A tenant may break a lease when experiencing financial hardship that is not necessarily 'severe' (a tenant representative organisation).
- Co-tenants should be able to break their own tenancy agreement (a tenant representative organisation).

Reasons why a landlord should be permitted to end a tenancy

- A landlord can end a tenancy if a tenant has breached an agreement, caused damage to a property or when rent is in arrears (five landlords, a landlord/agent representative organisation, a tenant and one other organisation).
- A landlord may end a tenancy agreement if it is found that a person other than the tenants are living in the property – particularly if a tenant is renting out a room with Airbnb or if there are too many people in the property (three landlords).
- It should be permissible for landlords to end a tenancy if they are experiencing financial hardship and need to sell the property (two landlords).
- Five tenants, three tenant representative organisations, a support service and one housing provider emphasised that a reason must be given for a landlord to end a tenancy agreement.

Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

Feedback received from respondents on the current notice periods

- Giving tenants 120 days' notice is a reasonable amount of time for tenants to organise alternative accommodation. This was a general comment, not specifically related to 'no specified reason' notices to vacate (two tenants, a housing provider and a tenant representative organisation).
- When there is a periodic lease, landlords should be able to give less than 120 days for 'no specified reason' notices to vacate (three landlords).
- The 120 day notice period for 'no specified reason' notices to vacate should be reduced to 90 days (a landlord/agent representative organisation).
- If rent is in arrears, a landlord should be able to end a tenancy with a 30 day notice period (a landlord). On the contrary, one tenant representative organisation suggested that if rent is in arrears, both the landlord and tenant will benefit if the issue is addressed together by both parties.
- If a notice to vacate has been served by a landlord, a tenant should be able to respond by giving a notice of intention to vacate of only 14 days' notice to end the tenancy and should not incur lease breaking costs (two support services, two tenants, a housing provider and a landlord).
- Tenants in shared accommodation should only have to give landlords 14 days' notice of intention to vacate, due to the relative ease of finding new tenants (Flatmates.com).

Respondents raised several additional concerns about current landlord practices for terminating a tenancy

- Too many landlords are terminating tenancies by falsely claiming grounds of renovation or family moving back into the rental property (five tenants).
- Tenants should receive increased notice periods for when a landlord defaults on their mortgage and the mortgagee issues a 28 day notice to vacate. In these cases, tenants rarely know that the landlord has defaulted on their mortgage and they are put under undue stress in order to vacate in 28 days (a tenant and support service).

Protecting tenants from landlord retaliation

The majority of respondents identified that tenants need more remedies or defences to prevent bad faith by a landlord. Tenants are often concerned about making a complaint or requesting maintenance out of fear of receiving a retaliatory notice to vacate (a tenant, an agent, a landlord/agent representative organisation and a support service).

Suggestions for remedies and defences

- Information on notices to vacate should be made clearer so tenants better understand when a landlord is acting in bad faith (two housing providers, a landlord and a support service).
- Notices to vacate should include a warning that a breach of s264 of the Act, (which prohibits re-letting for a period of six months after a notice to vacate on certain grounds has been issued), could result in a tenant compensation claim (VCAT). A tenant representative organisation believes that the six month period in this section of the Act should be extended to two years.
- A landlord acting in bad faith should be placed on a register which can be accessed by prospective tenants (a support service).

On the other hand, two landlord/agent representative organisations believe that the Act currently provides sufficient remedies and defences to tenants, as it provides them with the option of seeking an order through VCAT, that the retaliatory notice to vacate is of no effect.

Goods left behind at the end of a tenancy

Respondents were divided over the arrangements that should apply to goods that a tenant leaves behind at the end of a tenancy

- Landlords should be able to dispose of any goods left behind by a tenant (thirteen landlords).
- Tenants are responsible for disposing of or collecting any goods left behind (three tenants, three landlords and a housing provider).
- It is unfair for landlords to dump or dispose of goods that tenants may have left behind due to hardship (four tenants, an agent and a support service).
- The cost of the removal of any goods should come out of a tenant's bond (five landlords and a tenant).
- Current arrangements are fair as landlords can seek redress through VCAT (a landlord and a tenant representative organisation).
- Landlords provide reasonable access to the property for seven days in order for a tenant to remove goods left behind (a support service and a tenant representative organisation).

Rights & responsibilities

Review of the *Residential Tenancies Act 1997*

Summary of responses to the issues paper, *Rights and responsibilities of landlords and tenants*

For storing goods of monetary value, respondents expressed concerns over clarification of what to store and for how long

- Goods should be stored if their value exceeds that of removal (two tenant representative organisations).
- CAV should make an assessment on the storage of goods left behind in order to remove ambiguity (a tenant representative).
- High-value goods should be stored for a one month period (a landlord/agent representative organisation).
- High-value goods should be stored for six months (a tenant representative organisation).
- Requirements around personal document storage should be expanded from 90 days to two years (a tenant representative organization).

Rights and responsibilities when family violence occurs

In line with previous Issues Papers, many respondents recommended that the Act be amended to reflect the recommendations made by the Royal Commission into Family Violence (three tenant representative organisations, two support services, two housing providers, and a landlord/agent representative organisation).

The specific recommendations referenced

- Allow VCAT to apportion blame amongst co-tenants.
- Enable victims of family violence to break a lease early without lease break fees and have their portion of the bond immediately refunded.
- Allow family violence victims to remove their names from a tenancy database if the reason for the listing relates to family violence.
- Allow VCAT to make orders regarding family violence without a final intervention order.

Two landlord/agent representative organisations, two landlords, two support services and a tenant encouraged the creation of a government fund that can be used to compensate landlords who have suffered financial loss due to a family violence situation in their property. However, six landlords, a landlord/agent representative organisation and a tenant, responded that landlords should not be accountable for family violence situations in their properties because 'they are not charities' and must look after their investment first and foremost.

Theme 4: Conduct of agents

Many respondents shared their negative experiences in dealing with agents, in particular agents not passing information onto landlords or not following through on their duties (four tenants, three landlords, and a tenant representative organisation).

- Thirteen respondents want to see the Act specifically regulate the conduct of agents (four tenants, three landlords, three tenant representative organisations, two support services and a housing provider).
- Four respondents believe that the conduct of agents is sufficiently governed by the *Estate Agents Act 1980* and there is no need for greater regulation of agents in the Act (three landlord/agent representative organisations and a landlord).

