



Council to Homeless Persons – Bonds, rents and other charges issues paper.

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Introduction

The Council to Homeless Persons (CHP) welcomes the opportunity to provide a submission to the Bonds, rent and other charges Issues Paper (the Issues Paper) as part of the Residential Tenancies Act Review.

It is clear that provisions contained within the Act in relation to bonds, rent and other charges, requires significant revision. We were pleased to see the Issues Paper consider questions in relation to bonds, rents and other charges across the duration of the tenancy. As Hulse et al (2011) states: *'affordability of rental housing both at the point of entry and across the duration of a tenancy is arguably the most significant structural factor affecting secure occupancy for lower-income households'*.

Bonds

Commencing and maintaining a tenancy agreement

Current provisions limit a bond to the equivalent of one month's rent if the bond is less than \$350 per week. For rents of more than \$350, the bond can be higher. In addition, for rents above \$350, the bond can increase throughout the tenancy. As the Review has consistently reported, Victoria is facing a significant shortage of affordable housing. Few properties across Victoria rent for less than \$350, particularly in metropolitan areas.

Our consultations have found that, particularly for low-income families, being able to access funds for a bond can be challenging. We have heard accounts of people having to sleep rough because they did not have the ability to pull together a bond at short notice. This is a need to contain bonds, to ensure they do not become a barrier to entering housing. In order to minimize the barriers to housing, we propose that the Act be changed. The Act should be changed to limit bonds to one month of rent regardless of the weekly rent charged, and it should not be increased over the course of the tenancy. Changes to bonds over the course of a tenancy can increase financial pressure on households and rapidly push them into financial hardship.

Our consultations also found that there is limited knowledge of bond loan schemes. CHP strongly endorses the need to better educate consumers on low incomes about the bond loan scheme, to limit the financial stress households experience when commencing a tenancy.

Ending a tenancy agreement

Low income households face significant hardship transitioning between tenancies when they have paid a bond, and rent in advance, and have not yet received their bond refund.

To minimize this hardship, we propose that any uncontested bonds be refunded within ten business days upon the completion of a final inspection of the property. In the event that the bond is contested, any uncontested amounts should be refunded within ten business days.

How the Act regulates rent and other charges

Commencing a tenancy agreement

Prior to successfully securing a rental property, some agents allow prospective tenants to negotiate the weekly rental price. This is referred to as either rental bidding or a rental auction. The purpose of this is to effectively, get the 'best price' for the property on behalf of the landlord. People on low-incomes, who are already at a disadvantage in the private rental market, are further disadvantaged by this practice and may end up wasting considerable time attending 'open for inspections' at properties that ultimately rent at prices they cannot afford. We propose that rental bidding is prohibited to produce a more even playing field for prospective tenants.

Currently in Victoria, when people apply for a property, they pay one month's rent in advance in addition to their bond. This can place significant financial pressure on tenants, particularly those on low-incomes, as moving in itself can place significant financial strain on a household. Limiting rent in advance to two weeks would reduce this pressure.

During a tenancy agreement

Current legislation allows rent to be increased every six months if the weekly rent is over \$350. As stated in our Submission to the Security of Tenure Issues Paper, households enter into tenancy agreements that they believe will be financially sustainable for them, and rental increases more often than once a year can rapidly place households in financial stress.

As noted in our response to the discussion paper, CHP recommends that:

- rent increases should not occur more than once every twelve months
- rent increases should be capped in line with CPI increases
- rent increases should not be allowed if there are outstanding repairs
- the onus should be on the Landlord to apply to VCAT for any rent increases beyond the CPI
- the notice period given around rental increases should be increased to 120 days, to allow for the hearing of rent appeals.

Rental arrears

If a tenant falls behind in rent payment, a landlord can issue a notice to vacate when rent is 14 days in arrears. In our experience, it is not uncommon for a household to experience a sudden financial expense, or a sudden income shock that can rapidly place them into crisis, and result in them being temporarily in arrears. Usually this can be remedied. A breach of duty issued at fourteen days to allow a household to enter into a payment plan with the agent or landlord would be a more appropriate response and encourage swift remedial action. We propose notice to vacate as a consequence of arrears should be extended to 28 days.

Family violence provisions

CHP was pleased to see the recently released Royal Commission into Family Violence Report (2014-16) recommendations addressing tenancy issues arising as a consequence of family violence.

As part of Recommendation 116, the Report has recommended that:

“... the Residential Tenancies Act 2006 (Vic) consider amending the Act to:

- *provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence*
- *enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence*
- *enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts)”.*

These principles were put forward as part of the Tenants Union of Victoria (TUV) Submission to the Family Violence Royal Commission (2015) in relation to bond and compensation claims. In its submission, TUV highlights that bonds lodged in multiple names can leave the victims of violence in a position where they are forced to pay for arrears or damage that occur after they leave a property. Victims of family violence can also be left to cover arrears and damage they did not cause in the event that they stay in the property.

As such we support the following recommendations (R.9-11) of the TUV:

“Apportionment of Liability by VCAT

9. *We recommend that the Tribunal be given a specific power to apportion liability between tenants when:*
 - *a notice of intention to vacate has been given by a tenant with a final intervention order; or*
 - *the Tribunal has made an order to terminate the lease because the tenant has an intervention order under the FVPA or has been affected by family violence.*
10. *We recommend that the power to apportion liability be the same as that provided to the Tribunal by section 233C, in the case of a creation of tenancy. This would mean that the Tribunal could apportion any existing liabilities under the tenancy and the RTA, including the bond and outstanding utility bills. This would enable the Tribunal to apportion liability for damage to the rental property, rent and any compensation payable to the landlord for the lease ending early.*
11. *We also recommend that the Tribunal be given a general power to apportion liability between tenants when there has been family violence to deal with*

situations where family violence is a factor but the provisions of the Act do not specifically allow for that to be taken into account”.

Case study:

Pri was forced to flee family violence with her young children, and leave the family home. Her former partner finally left the property, however Pri was advised it was unsafe for her to return to the property alone. As her bond could not be returned until the house was vacated and cleared, Pri arranged for Police to attend with her so she could attempt to empty the property. When Police arrived, they informed her they were only able to stay for an hour, and she was tasked with removing as much as she could within that hour. A significant portion of her bond was withheld by the agents to pay for emptying the remainder of the property and disposal of personal possessions. Pri believes if she could have accessed a portion of the bond earlier, she would have been able to save her possessions and leave the property in a clean state.

Other charges

Holding deposits

CHP supports recommendation made by TUV in their Laying the Groundwork Submission (2015), that the Act should provide clarification in relation to holding deposits (see Recommendation 13). We also agree that the holding deposit must be converted into payment of either rent or bond, or, if a tenancy agreement is not entered into that the deposit must be refunded in full.

We do note, however, that low-income earners may not have the same ability as middle to high income households to access funds to use for a holding deposit.

Fee-free methods of paying rent

When tenants sign leases, the method in which they must pay their rent is outlined in their tenancy agreement. CHP supports suggestions made by a number of agencies, that agents/landlords must offer at least one fee-free option for paying rent. We do not believe that tenants should have to bear the costs of using a third-party collection agency, as this adds to their cost of renting.

References

Hulse K, Milligan V and Easthorpe H, 2011, *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, AHURI final report No.170, Australian Housing and Urban Research Institute, Melbourne.

State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16).

Tenants Union of Victoria (2015) *Submission to the Family Violence Royal Commission*, Tenants Union of Victoria, Fitzroy.