



CARPAV

Connections

April 2014 Issue 5

Limit to Liability

Under the *Residential Tenancies Act 1997* if a site tenant has failed to comply with a site agreement, or duties under a site agreement, the site owner can apply to the Victorian Civil and Administrative Tribunal (VCAT) for compensation.

However when this compensation relates to rent payable under a site agreement (also called site fees), after termination there is a limit to liability if the site tenant should be ordered to pay.

It is understood that this limit to liability was introduced into the Act to reduce the burden of indefinite payment of site fees if a unit is difficult to sell and the site tenant has to vacate their unit.

The compensation will relate to the termination of a site agreement, whether by disclaimer or abandonment, and if awarded must not be more than the lesser of:

- a) the rent that would have been paid, had the agreement not been terminated, for 12 months; or
- b) the rent that would have been paid, had the agreement not been terminated, until the site is occupied by someone else; or
- c) the rent that would have been paid, had the agreement not been terminated, for the remaining term of the agreement.

The site owner must ensure they minimise any associated costs related to their claim. It is important to note that the Act allows for orders of compensation to be made for other losses incurred by the site owner, such as losses created by having the site occupied beyond the 12 months indicated above.

The Act also allows for site tenants to apply for compensation in relation to various losses, such as the costs of relocating a dwelling or disposing of a dwelling.

If you find yourself in a situation requiring you to exercise the rights outlined above the best course of action is to seek legal advice.

NOTE: This is a general guide to the law only and does not constitute legal advice.

Housing for the Aged Action Group
1st Floor, Ross House, 247-251 Flinders Lane, Melbourne VIC 3000
Admin: 9654 7389 . Fax: 9654 3407
Email: haag@oldertenants.org.au . Website: www.oldertenants.org.au