Housing for the Aged Action Group
ABN: 80 348 538 001
Reg: A0017107L
Postal address: 1st Floor, Ross House
247-251 Flinders Lane, Melbourne 3000
Admin: 9654 7389 Fax: 9654 3407
Intake: 1300 765 178
Email: haag@oldertenants.org.au
Website: www.oldertenants.org.au

20 May 2016

By email: yoursay@fairersaferhousing.vic.gov.au

Residential Tenancies Act review
Rights and Responsibilities of Landlord and Tenants Issues Paper

This submission is a response by Housing for the Aged Action Group (**HAAG**) to the 'Rights and Responsibilities of Landlords and Tenants' issues paper forming a part of the review of the Residential Tenancies Act (**RTA**).

HAAG would like to acknowledge that the submission was compiled with contribution from our members and that this forms the foundation of our response.

We note that many of the topics discussed in this issues paper are also important to tenants and residents of caravan and residential parks, ILUs, and rental villages. We look forward to discussing the issues arising around the balance of rights and responsibilities in those tenures in responding to the forthcoming issues paper on alternative forms of tenure.

That said, we would like to emphasise that matters such as the form of agreements, adequacy of disclosure, duties of residents, site tenants, managers and operators, entry to rented premises, issues around subletting and assignment, termination, and conduct of managers and operators are all important to consider and address in relation to the above forms of tenure, especially in the context of age-specific housing.

1. Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?

It is increasingly common for real estate agents to require tenants to supply copies of bank statements as part of the application process. In HAAG's view this is highly inappropriate, and we hear frequently from members and clients that they consider this both an infantilizing intrusion and a serious breach of their privacy. We are particularly concerned that bank statements can include information about medical expenditures – and while this is true for all tenants, it is disproportionately the case for older tenants. Requests to view bank statements may sometimes constitute de facto requests for information (for example, regarding disabilities) which would be prohibited by the Equal Opportunity Act, if made directly, and may lead to discriminatory (or simply

judgmental) decisions. Where there are less intrusive ways to establish a tenant's capacity to pay the rent, landlords and agents should be prohibited from seeking copies of bank statements.

6. What is your view on the stakeholder proposal to prescribe a standard application form, and what information should be required to be included in such a form?

HAAG strongly supports the proposal to prescribe a standard application form.

13. What requirements and approaches, including communication channels and support, should govern the form and service of documents for tenants, landlord and agents?

HAAG is very concerned by recent changes to facilitate the service of notices to vacate by email. Previously, the Act has registered the seriousness of notices to vacate and the importance that tenants receive them in a timely manner in the prescribed manners of service (by registered post and by hand). While in practice tenants do not always receive registered post articles either at all or in a timely way, electronic service presents more serious issues that will be particularly acute for older tenants.

Overall, older people use the internet less than the general population. ABS data from 2014-15 found that only 51% of people aged 65 and over were internet users, compared to 85% of the general population.[1] In our experience, older people who are regular internet users often have significant limitations to that use: they are only online irregularly, for example when they visit a local library or community centre; or they either decline to open attachments out of a fear of viruses, or simply don't understand how to do so. Older people on income support may also have intermittent internet access depending on whether they can afford to maintain a connection at a given time.

Notices served by email are effectively deemed to be served immediately. Older tenants will be disproportionately disadvantaged by this mode of service, and we expect that if such service becomes commonplace that many older tenants will, in practice, receive less notice than required by law as notices to vacate will be deemed to be served before the tenant sees them.

For people with limited internet access or capacity, it is also much easier to seek advice about a paper notice to vacate – something they can easily take with them and show to an advocate. It is very hard for advocates to give appropriate advice about a notice they can't see, and in my experience it is often frustrating to try to correctly relay an email address over the phone so that a document can be forwarded online, particularly to tenants who are partially deaf or whose first language is not English. We believe that the service of notices to vacate by email will lead to more older tenants being evicted in situations where they might otherwise have accessed advice that could have protected their tenancies.

> *Case study:* Rose is 71 and received a notice to vacate for repairs which was served with only 59, rather than the required 60, days notice. I assisted her to apply to VCAT to successfully challenge the notice, and some time later she moved into public housing. The hearing took place at Hume Global Learning Centre, and Rose mentioned that until recently she had visited the Centre most days to access the internet. She had not been able to do so for some weeks because ongoing construction work in the parking lot made it very difficult to get her mobility

[1] Australian Bureau of Statistics.

scooter from the bus stop into the building. Had the landlord served a notice to vacate by email, Rose would not have received it in time to get advice about it and would likely have been forced to move on short notice into inappropriate conditions.

21. What is the right balance between the interests of tenants and landlords in respect of pets in rented premises? What reforms, if any, are require to current arrangements?

The Act already provides substantial protections and remedies for landlords whose interests are compromised by a tenant's pet. These remedies are contained in the sections regarding breaches of duty (as well as provisions for entry for general inspection) which allow a landlord to seek compensation or compliance orders where a pet causes damage to the rental premises, or causes a nuisance to a neighbour. Ultimately, a tenant may be evicted if their pet continues to act in a way that breaches the tenant's duties. Outside of such breaches – in the wide range of cases where a pet does not cause damage or a nuisance – we do not see that pets are any of the landlord's concern.

The health benefits associated with pet ownership, particularly for older people, are well established.[2] HAAG believes the Act should protect responsible pet ownership, including by preventing landlords and agents from asking prospective tenants whether they own pets, and by prohibiting terms in tenancy agreements that seek to unreasonably disallow the keeping of pets.

27. What are your views on the stakeholder proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing by a community housing provider?

HAAG strongly supports this proposal. HAAG's Home At Last service houses large numbers of older people in social housing. Tenants entering social housing are on low incomes and, overwhelmingly, experiencing severe rental stress if they are not already homeless. Social housing providers generally require tenants to accept offers and commence tenancies swiftly, and the obligation to provide 28 days notice to vacate on accepting such an offer frequently compels vulnerable tenants to pay double rent. In some cases, the impossibility of meeting these obligations causes tenants to decline social housing offers and remain in highly unsuitable and insecure private rental accommodation, and at ongoing risk of homelessness.

That is, the same concerns which motivated the reduced period of notice of intention to vacate for tenants entering public housing apply to tenants who have received social housing offers. As the government continues to rely more on social housing providers to take up the slack in the provision of affordable, secure housing caused by the chronic shortage of public housing, it is increasingly urgent that prospective social housing tenants are not unnecessarily disadvantaged in taking up housing offers.

28. For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?

Overwhelmingly, older tenants who receive 60 day notices will struggle to find suitable alternate accommodation within that time. Their ability to do so is limited not only be financial constraints common to all low-income tenants, but frequently by reduced mobility and/or lack of internet

[2] Smith.

access and proficiency, and a need to remain in local catchments or reasonable travel distances of medical and other support services on which they rely. Once they do find housing, physical constraints often also make packing and moving more difficult.

> *Case study*: May is 63, with severe psoriatic arthritis. She has rented a modest unit for the last 30 years. Due to chronic pain and limited mobility she has not left the rented premises in almost two years, with her brother doing all of her shopping and errands and a GP making regular house calls. In March, May received 60 days notice to vacate for the landlord to carry out renovations. Given her physical limitations and significant support needs, there is almost no prospect she will find a new home before the notice to vacate expires, and despite her lengthy tenancy, her landlord refuses to negotiate any extension. Even if VCAT postpones the eviction for the full 30 days allowed, there is an extremely high chance that she will become homeless, with predictable, severe consequences for her physical and mental health.

The Act currently allows 120 days notice to vacate for no reason. Setting aside the appropriateness of no-reason notices, we submit that 120 days is a reasonable notice period for any notice to vacate which is not based on any breach on the part of a tenant. 120 days is a period of time in which older tenants could, in most circumstances, reasonably expect to both find and move into alternative accommodation. In the most serious cases, where private rental is not an appropriate option and where the tenant accesses housing support, 120 days is a time frame in which it is plausible for tenants to receive an offer of public or social housing. It also does not seem unreasonable to us that landlords can and should make substantial plans regarding investment properties – such as major renovations or sales – at least 120 days in advance.

30. What remedies or defences should be available to a tenant to prevent bad faith by a landlord who is attempting to end a tenancy?

First, the Act should explicitly require a landlord who gives a notice to vacate to fully explain the reasons for doing so. Justice Bongiorno's decision in Smith v Director of Housing interpreted s319(d) of the Act as requiring, at least in some circumstances, that the landlord provide enough information as to the reason for the notice for the tenant to determine whether they can or should contest the basis of the notice. However, VCAT has not always been consistent in its decisions as to which kinds of notice require such detail. For example, we have assisted a number of clients to challenge notices to vacate under s255 (for repairs or renovation) on the basis that the notices only restated the Act as to the reason for the notice, and did not specify what repairs or renovations would be required. In some cases VCAT has accepted this argument and dismissed the notices to vacate, but in other cases the Tribunal has upheld the notices. This creates a great deal of uncertainty for all parties as to what kind of information is required by what sort of notice to vacate. Greater clarity in the Act would not only assist parties to understand their rights, it would make it more difficult for landlords to issue bad faith notices to vacate. This would mean, for example, that a landlord giving a notice to vacate under s255 would have to explain in the notice to vacate what work would be undertaken, when it would commence, and why the work could not be completed while the tenant remained in the rented premises. In the case of an s258 notice to vacate, it would require that the landlord specify which family member would be moving into the rented premises. This sort of information would help a tenant who had received a notice given in bad faith by specifying the points of fact which were open to dispute.

As we have submitted previously, we would also favour the extension of the current prohibition on reletting premises where the landlord has given a 60-day notice to vacate from six months (a fairly short period, especially given it includes the 60 days of the notice itself) to two years. We would also like the Act to specify the grounds on which a landlord could apply to the Tribunal to reduce or waive this period (currently left open by section 264(2)(b).

Again as submitted previously, we also favour the expansion of the protection against notices to vacate given in response to the proposed or actual exercise of rights under the Act to all kinds of notices to vacate. While this protection currently applies only to no-reason notices, in practice landlord who intend to carry out this kind of retaliatory eviction frequently have other plans for the rented premises – and if they decide to sell the property, for example, because a tenant has asserted their right to quiet enjoyment, they can evict the tenant with just 60 days notice. These kinds of eviction are a particular concern for low-income tenants, who are more likely to rent properties in constant need of significant repair; any attempt to assert their rights may result in an openly retaliatory eviction.

> *Case study:* Raymond, 65, was diagnosed with motor neurone disease, a degenerative condition. An occupational therapist recommended the installation of a number of grab rails in the rented premises and, on receiving this request, the landlord issued a no-reason notice to vacate. HAAG assisted Raymond to apply to challenge the notice to vacate at VCAT on the grounds that it was given in response to a right under the Act, and the landlord immediately served a s255 notice to vacate. As there is no prohibition against serving a s255 notice in such circumstances, there was no grounds to challenge this notice.

HAAG's experience has been that it is unusual for landlords to give notices to vacate in bad faith, but that the fear they will do so is widespread among tenants and discourages tenants from exercising their rights.

BIBLIOGRAPHY

Australian Bureau of Statistics, "8146.0 – Household Use of Information Technology, Australian, 2014-15". *Abs.gov.au*. N.p., 2016. Web: 15 May 2016.

Smith, Bradley. "The Pet Effect". *Racpg.org.au.* N.p., 2016. Web. 17 May 2016.