



SUBMISSION BY EASTERN COMMUNITY LEGAL CENTRE

Response to Proposed Residential Tenancies Regulations 2020

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Introduction

Eastern Community Legal Centre (ECLC) is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges.

ECLC currently provides tenancy advice and casework through the Deakin Student Legal Service (DSLS), a program which has been funded by the Deakin University Student Association since April 2012 to provide on-site legal information, casework and support to all currently enrolled Deakin University students at the Burwood campus. Tenancy matters make up about a third of this work in the generalist service, and the service has provided assistance on hundreds of tenancy matters to date.

ECLC and International students

The majority of domestic students are either receiving a Centrelink benefit, being fully or partially supported by their families and/or working nominal casual hours. Many international students also access the DSLS for advice and assistance and make up about two thirds of the clients through the generalist service. In addition to facing cultural and language barriers in understanding Australian laws and renting norms, it is ECLC's experience that international students are also hyper-vigilant about their visa status. As a result, they are often deterred from enforcing their legal rights on the mistaken belief that it will negatively impact upon their visa or right to stay in Australia. In some cases, landlords will make direct threats to students that they will be deported or will get in trouble if they complain about their housing.

Due to their low income and preference to live closer to the University, the majority of students live in some type of shared household arrangement; either with co-tenants, in a rooming house or as a sub-tenant. These arrangements are often informal – with or without the landlord's knowledge, either purely verbal, or using written agreements outside the prescribed form, including written agreements in different languages.

Due to the limited scope and clients for ECLC's tenancy services, this submission will address the areas where ECLC's clients are most affected. ECLC makes these submissions in addition to and alongside the submissions of our colleagues at Tenants Victoria. ECLC endorses the submission of Tenants Victoria.

1. Maximum Bond and Maximum Rent in Advance

Particularly for the student and international student cohort, there has been a rise of shared housing and co-tenancy arrangements as it is difficult for students to afford to live on their own. In reality, this means that students may live in large share houses with a large overall rental income however, the composition of the renters are all low income earners. Often, such houses will comprise at least 4-5 individuals who contribute to the overall weekly rent, which may be more than \$900.00. An absence of bond and rent caps on rental incomes of more than \$900.00 per week fails to recognise the reality of affordable living for students in Victoria. ECLC therefore recommends that there be a one month maximum bond and rent in advance cap be imposed on rental incomes of \$1500.00 per week so that most people, including students in share housing arrangements are included in this cap.

2. Compensation for Sale Inspections

ECLC supports Tenants Victoria's submission at page 32 that compensation to tenants for sale inspections should be raised to 1 day's worth of rent rather than a half day. Often tenants will need to plan their whole day around an open for inspection, especially if they cannot object to the day and time after having a notice of entry correctly served on them. As such, they should be duly compensated.

3. Mandatory Disclosure

a. Mould

ECLC welcomes the inclusion of mould as an urgent repair issue and supports the submission of Tenants Victoria at page 12 in relation to disclosure regarding mould. It is ECLC's experience that mould is a repeat issue for tenants, and landlords have been known to paint over patches of mould rather than resolve the issue. Mould can cause significant health issues for tenants, and it is difficult for tenants to spot in an initial inspection and as well as difficult for tenants to diagnose and fix after they have moved into a property.

b. Subletting

ECLC has experience with many students who live in properties as sub-tenants. Unfortunately, ECLC has witnessed numerous issues with subletting which has resulted in the difficulties for sub-tenants to enforce their rights, and a lack of accountability for the head tenant who legally fills the same position of the landlord for the sub-tenant under the RTA.

A common example is where sub-tenants pay their rent to the head tenant, but unaware that the entire house is in rent arrears because the head tenant has never passed on the payment to the landlord. Another common issue is where the head tenant never sought the landlord's permission to sublet the property, but there is no mechanism for the subtenant to check whether the subtenancy has been approved. A sub-tenant could therefore enter into an agreement with a head tenant and through no fault of their own, the entire house could be evicted for illegal subletting.

Sub-tenants are wholly reliant on the head tenant for any information about the primary rental agreement, and it is relatively common for head tenants to lie or mislead sub-tenants about their legal situation. ECLC recommends an additional mandatory disclosure requirement under regulation 16 for where a rental agreement is a sublease, the head tenant must provide the contact details of a landlord or real estate agent for the primary rental agreement, and provide the sub-tenant a copy of that primary rental agreement.

4. Payment Before Entering Rental Agreement

ECLC supports the submission of Tenants Victoria at page 8 in that tenants should be provided a written rental agreement before being required to pay any money to secure the property. ECLC notes that a common online housing scam extorts money from people by downloading images from a legitimate listing, then having the scammer pretend to be the landlord looking for renters. People who experience more vulnerability, such as ECLC's international student cohort, are more likely to be targeted and be vulnerable to these scams. ECLC recommends that providing a written agreement would make it more difficult for scammers to take advantage of people who are new to the country and may also provide an opportunity for people to seek legal advice prior to signing any written agreement.

5. Clarity for tenancy agreements and other forms

a. Lease breaking

ECLC supports Tenants Victoria's submission at page 18 in relation to blanket lease breaking and assignment charges and clauses. In particular, ECLC supports any charges must be evidenced by the landlord/agent, reflect the actual charges accrued and apply pro-rata. ECLC proposes an additional prohibited term should be added under regulation 11 preventing landlords and agents from including fixed lease break and assignment costs into rental agreements, or any other terms where costs are not calculated on a pro rata basis or with respect to actual loss.

b. Professional cleaning - prescribed provision

ECLC notes that the proposed draft of the professional cleaning prescribed provision (regulation 12) is extremely confusing and likely to be difficult for tenants, landlords and agents to understand and interpret correctly. It is ECLC's submission that this provision be simplified and clarified for everyone involved. ECLC suggests a rephrasing could reflect the following:

“Tenants must to pay for professional cleaning, where, immediately prior to the tenant retaining possession of the property, the landlord has had the property professionally cleaned, and can provide evidence of the cleaning to the tenant, and professional cleaning is reasonably necessary to return the property to the original condition.”

c. Notice To Vacate – end of lease

Under section 91ZZD of the Residential Tenancies Amendment Act 1998, a Notice to Vacate is only permitted to be provided at the end of a fixed lease if it is at the completion of the initial fixed term. Under the amendments, landlords will not be able to give a Notice To Vacate for this reason at the end of any subsequent tenancy agreements. For clarity and transparency, it is recommended that the guidance following the proposed Notice to Vacate form under the heading “Information for the residential rental provider” should clearly state this.

Conclusion

ECLC welcomes this opportunity to provide feedback on the proposed Residential Tenancies Regulations. Under the new Residential Tenancies Amendment Act, the regulations will now play a much larger role in clarifying the rights and obligations of tenants and landlords in detail. In this context, it is more important than ever that the regulations are easy to read and understand for the general public and audiences that may have a limited knowledge of the law and legal processes.

ECLC also views the regulations as an opportunity to provide further guidance so common tenancy disputes can be easily resolved without resorting to making applications at VCAT. In the current circumstances where Victorians are experiencing high amounts of rental stress, tenants will be better able to protect their homes and assert their rights when they can point to a clear and straightforward guiding document that landlords must adhere to.

For further information about this submission, please contact Connie Chen of the Eastern Community Legal Centre at the Box Hill office.