

Minors & Renting

Background

Advocates often encounter a young person or persons who have entered into residential tenancy agreements. It is important when providing advice and assistance to understand the law as it applies to contracts entered into by minors, including residential tenancy agreements.

This memo sets out the law as it stands in Victoria. Please seek legal advice in relation to contracts entered into in other jurisdictions.

Who is a minor?

The 'age of majority' is 18 years. Persons of this age or older are capable of entering into contracts, including leases.

People under 18 years are often referred to as 'minors' in legislation and legal commentary. The ability of minors to enter contracts depends on the subject matter of the contract and in particular whether the contract is for "**a necessary**".

Contracts for "a necessary"

If a **landlord** can establish that a contract is a "necessary" as defined by the common law, the tenant will be bound and landlord will be able to enforce the contract against the minor.

What is a "necessary"?

Necessaries include goods and services that are reasonably needed to maintain a person. This will depend on the minor's individual circumstances but it generally has been held to include basics such as:

- > food
- > clothing
- > housing
- > medicine

A lease is therefore capable of being a contract for a necessary. If there is other available accommodation at a lower price this could be evidence as to whether a lease is necessary. The onus is on the landlord to establish that the lease was a necessary.

Non-necessary contracts

In Victoria contracts made for "**non-necessary**" items may be either void or voidable.

'Voidable' means that the minor can avoid the contract at any time during minority and, upon attaining full age, could elect to ratify (confirm) the contract, avoid it or do nothing until later.

If the lease is not a necessary for a minor then:

- > it may be void from the beginning
- > the landlord could be required to repay rent in respect of any period for which the minor did not receive any benefit eg. vacated early
- > the landlord may be unable to enforce payment of rent, particularly if the minor vacates without notice
- > the landlord may be unable to enforce the provisions of the Residential Tenancies Act or to rely on the Act's termination and eviction provisions against the minor
- > the landlord may need to rely on common law procedures to regain possession

Guarantees and Indemnities

This is a complex area and if a minor has signed a lease that is secured by a guarantee or indemnity, legal advice should be sought.

In general it should be noted that the validity of a guarantee depends on the underlying liability. If the lease is enforceable against the tenant it is likely that the guarantee will also be valid. However, if the lease is voidable and the tenant elects to repudiate the agreement, the underlying guarantee also comes to an end.

The situation differs in relation to indemnities, as these securities have been held liable against the indemnifier irrespective of the liability of the minor.

Discrimination

If a landlord declines the application on the ground of age, this could constitute unlawful discrimination. However, there may be several possible defences available to a landlord in response to an allegation of discrimination.

Lawful reasons for refusing a lease to a minor could include:

- > the minor's lack of maturity or experience in looking after premises
- > the landlord is not satisfied that the lease is a necessary
- > the onus on landlord to prove the lease was a necessary, if challenged
- > the serious consequences if the lease is found not to be a necessary.

What should you do?



1. When providing advice or assistance it is important to ascertain the age of the persons who are parties to the tenancy agreement.
2. If the person seeking advice is a minor, you should inquire as to the circumstances in which the lease was entered into. In particular:
 - a. Did the minor sign the lease? Or did a guardian or parent sign?
 - b. If signed by the minor, did an adult guarantee or indemnify the minor?
 - c. If signed by the minor, was the lease a necessity?

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific case you want advice about then you should contact us on **(03) 9411 1444**

Regards,
Tenants Union Legal Service

References

1. The Law Handbook 2006, Fitzroy Legal Service, Chapter 12.1 The Law of Contract, p. 492
2. Chesire and Fifoot's Law of Contract 8th Australian Edition
3. Supreme Court Act 1986 (Vic)