

Tenant Advocacy Practice Note #06/011

Representation at VCAT

Background

From time to time tenant advocates will need to represent their clients at VCAT. In addition advocates may be required to give advice about VCAT procedure to self-represented tenants or residents.

What is the issue?

We have conducted a number of training sessions about VCAT representation for tenant advocates this year. It is evident from these training sessions that the knowledge and skills of advocates vary quite considerably. We thought it would be timely to provide a summary of the main points of practice for advocates representing at VCAT.

In particular, the following is a summary of the presentation given by Senior VCAT Member Lambrick at training for SHASP providers on the 29th November 2006.

What should you do?



1. Members are legally trained and are likely to respond favourably to legal submissions that refer directly to the relevant legislative provisions. Advocates ought to be familiar with the legislation and its application to tenancy disputes. Any submissions made ought to refer directly to the relevant provisions of the Residential Tenancies Act, and to their application to the case at hand
2. Ensure any applications made on behalf of tenants comply with the legislation and the VCAT Rules, and applications made on behalf of the landlord should also be scrutinised accordingly.
3. Where possible, enter into communication or negotiations with the other party. This may lead to settlement of the dispute without the need for hearing at VCAT but if not, it may give insight as to the position the other party is adopting and the basis for it. Counter arguments can then be constructed on behalf of the tenant based on the evidence available and the instructions received.
4. It is vital to obtain full and clear instructions about the dispute and the desired outcome and any orders sought from the Tribunal. Ascertain the substantive issue(s) in dispute and emphasize these to the tenant. Establish the 'bottom line' regarding what the tenant would settle for by way of negotiation. Gather all available evidence in support of the tenant's position, such as photographs, rent receipts, condition report etc.
5. Prepare the tenant adequately for the hearing regarding the process of swearing in, where to sit, how to address the presiding Member and give evidence in a succinct, clear fashion etc. and provide a realistic expectation of likely outcomes- based on sound knowledge of the legislation and its application.
6. Empower the tenant to give their own evidence and to present their side of the story. Advocates can then add comments or make submissions based on the evidence.

7. Present documents as required and ensure that you are familiar with and can verbalise any written submissions handed up to the Presiding Member
8. Dress appropriately and be courteous to the Tribunal and any other parties to the proceedings at all times.

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