

# Bond Payable

### Background

We have received a number of enquiries from tenants who have been asked to pay additional bonds at rented premises, both whilst current agreements are on foot (for example when a tenant wishes to keep a pet at the premises), and when being offered subsequent Tenancy Agreements in respect of continuous occupation of the same premises.

### What is the issue?

Ascertaining what restrictions apply to the bond payable in respect of a Tenancy Agreement or proposed Tenancy Agreement may require close examination of the relevant provisions of the *Residential Tenancies Act 1997* (Vic) (the 'RT Act'). This Practice Note is an attempt to clarify the application of these provisions, specifically in relation to the maximum bond payable and any additional bond(s) payable.

### What should you do?



1. Section 3(1) of the RT Act defines a bond as an amount paid or payable by a tenant to secure his or her performance and observance of the Tenancy Agreement or any of the provisions of the RT Act relating to the agreement. The requirement to pay a bond is often included as a provision or term of the Tenancy Agreement.

2. If a tenancy agreement is silent on whether a bond is required, a tenant may refuse to pay a bond in the event that a landlord subsequently requests a bond during the term of the tenancy. Section 247 of the RT Act permits a landlord to issue a Notice to Vacate only "... if the tenant fails to comply with a provision of the tenancy agreement relating to the payment of a bond." (our italics).

#### A. Maximum Bond Payable

3. Section 31(1) of the RT Act imposes a limit on the maximum amount of bond payable at the equivalent of one month's rent when rent does not exceed \$350 per week.
4. When the weekly rent exceeds \$350 per week then the restriction on the amount of bond does not apply and there is no limit on the amount of bond the landlord can require (s 31(3)).
5. However, even where rent does not exceed \$350 per week, a landlord may apply to the Tribunal to increase the amount of bond payable beyond the equivalent of one month's rent (s 32). The Tribunal will then set the maximum amount of bond payable (s 33).
6. Where the landlord applies under section 32 for the maximum bond allowable under section 31 to be increased, the amount ordered by the Tribunal under section 33 would form a variation to the provision of the Tenancy Agreement relating to the payment of a bond.

7. A further exception to the limit set at section 31(1) exists where the premises were the landlord's principal place of residence immediately before the Tenancy Agreement was entered into and this fact is stated in the agreement, along with the landlord's intention to resume occupancy of the premises on the termination of the Tenancy Agreement.

#### **B. Additional or Subsequent Bond**

8. A party cannot unilaterally vary the terms of the Tenancy Agreement. Therefore a landlord cannot require a tenant to pay a bond whilst a tenancy is on foot where there is no provision in the Tenancy Agreement requiring the tenant to pay a bond. Similarly, a landlord cannot require a tenant to pay additional bond *in respect of the same agreement*, irrespective of how much rent is payable.
9. Where the weekly rent does not exceed \$350 and the tenant has paid a bond for the initial Tenancy Agreement, a tenant cannot be required to pay an additional bond under a subsequent agreement under which the tenant continues in occupation of the premises (s 34).
10. However, where the rent is more than \$350 per week, the landlord *may* increase the bond under any subsequent agreement entered into by the parties during the tenant's continued occupation of the premises. Note that a tenant may choose not to enter into any subsequent agreement offered, or attempt to negotiate for the removal of a clause or term requiring an additional bond payment. But if an agreement is entered into, the tenant would be bound by its terms (assuming the terms are otherwise valid).

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 matter you should contact the Tenants Union on **(03) 9411 1444**.

#### **Tenants Union Legal Team**

#### **References:**

RT Act 1997, ss. 3, 31 – 34, 247.