

Thursday, 10th December, 2009

National Regulation of Residential Tenancy Databases
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Dear Sir/Madam,

RESIDENTIAL TENANCY DATABASES CONSULTATION

The Tenants Union of Victoria (TUV) welcomes the opportunity to respond to the Residential Tenancy Databases (RTDs) – Model Provisions Consultation Package.

The TUV was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 18,000 private and public renters in Victoria each year. Our purpose is to improve the status, rights and conditions of all tenants in Victoria.

We consider that the model provisions strike a fair balance in protecting the interests of both tenants, landlords and the RTD industry. They protect tenants from the misuse of personal information whilst providing landlords and estate agents with access to relevant information for assessing prospective tenants. Moreover the provisions will introduce a clear regulatory framework for RTD operators to abide by.

The consultation materials demonstrate that currently Victoria is one of the few states which fails to provide direct regulation of RTDs. As a result tenants in this state are completely vulnerable to the whims and idiosyncratic listing practices of estate agents.

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Case Study

Owen was made redundant at the front end of the Global Financial Crisis. As a result Owen and his wife Meaghan fell into \$600 of arrears. They received a notice to vacate but were able to reach a satisfactory arrangement to repay the arrears so the tenancy agreement continued.

Meanwhile the landlord's personal circumstances changed and as a result she wanted to regain possession of the property as soon as possible. A notice to vacate was given for the end of the fixed term, Owen and Meaghan vacated with their two young children. At this time the rent arrears had been fully paid off.

Because of the earlier problem with rent arrears Owen and Meaghan were listed under the 'refer to agent' category on a tenancy database. Owen and Meaghan applied for over one-hundred rental properties and were rejected for all. They spent the next fourteen months living in motels, cars and sleeping on friends' floors. The family also had to split temporarily while Owen found rooming house accommodation and Meaghan and the children stayed at a refuge.

Case Study

Four years ago Rebecca was ordered to pay \$1300 to her landlord by VCAT as the result of an accidental carpet stain. Most of this amount was deducted from the Bond the remainder that was owing was paid by Rebecca straightaway.

This year Rebecca broke up with her partner Brett. Rebecca decided that she would move out, but when she started applying for rental properties she quickly found out that she had been listed on a tenancy database because of the problem with the carpet.

It's now 7 months later and Rebecca is still living with her ex-partner in unsatisfactory circumstances because she has been unable to secure appropriate accommodation.

There is a pressing need for the prompt introduction of this legislation. As it stands tenants are being listed for minor breaches or for simply asserting their rights, and as a result being rendered homeless.

We would urge the government to seek the prompt passage of Victorian legislation once in-principle agreement has been reached on the model provisions by the Ministerial Council on Consumer Affairs.

Until this legislation commences the credible threat of a database listing will continue to dissuade many tenants from asserting their basic rights.

Case Study

Erin has been offered a job interstate and has accordingly sought to terminate her fixed-term tenancy agreement early. In Victoria it is an offence for a landlord to impose a lease break penalty unless the amount claimed is worked out in accordance with the Residential Tenancies Act.

Erin received advice on her legal position however she was bullied into paying a fee which was greatly in excess of what was permitted under the legislation because the Estate Agent said that Erin would be listed on a tenancy database if she did not accede to the demand.

We now turn to respond to the specific questions posed in the consultation paper.

1. *Do the model provisions provide an effective framework for regulating the conduct of lessors, agents and database operators in relation to residential tenancy databases?*

The model provisions do provide such an effective framework by:

- Reasonably limiting the grounds for listing to avoid minor and trivial breaches being the basis for a listing or listings that are unsupported (eg. refer to agent),
- Reasonably limiting the content to be listed to that which is about the breach and is accurate, complete and unambiguous,
- Requiring that a tenant be informed of the proposed disclosure of their personal information and giving them the opportunity to respond,
- Establishing an obligation to ensure the quality of listings on both agents and the database operator,
- Providing a right of access to personal information held on the database,
- Providing access to a dispute resolution process where the parties have been unable to resolve the matter themselves, and
- Ensuring that information which is out of date is deleted.

2. *If these model provisions were adopted, subject to the modifications and additions outlined above, would the provisions be workable in Victoria?*

There is no reason to suggest that the provisions would be unworkable.

The provisions reduce the regulatory burden on estate agents and database operators by providing clear guidance on when and how a tenant may be listed and by also providing a straightforward framework for dispute resolution. This is preferable to the existing patchwork of indirect regulation.

Specific comments concerning Victoria's modifications and additions are set out at number 4 below.

3. *Are the provisions clear and unambiguous?*

As is anticipated the local definitions for bond, tenancy agreement, and residential premises etc will apply.

We do not consider that any fee should be charged for access to personal information, in any case the question of whether a fee is considered excessive may result in ambiguity and disputation. If a fee is to be charged at all, the amount should be prescribed.

Section 4 will need to reflect that action taken may be for breach of a duty imposed by the Act rather than necessarily for breach of the agreement.

The provisions are otherwise clear and unambiguous.

4. *Do you have any other comments regarding the draft model provisions?*

All listings should be supported by a tribunal or court order in which a breach or debt has been proved so that they are capable of independent verification. Clause 4 requires such verification in the case of termination but not in the case of debt, this is anomalous – all listings should be supported by a tribunal or court order.

Section 9 requires a listed person to reasonably attempt to resolve the disputes before applying to the tribunal. It will often be the case that a failure to promptly rectify a listing will lead to homelessness. In those circumstances an expedited and direct application to the tribunal should be permitted.

In relation to the modifications proposed to be adopted by the Victorian government, we note the following:

- We support the inclusion of a provision conferring VCAT with jurisdiction to hear matters concerning a breach of the listing provisions, corrections and proposed listings.
- A failure to comply with an order of the Tribunal is already an offence and this is appropriate (s 133 VCAT Act). In addition the Victoria government should include penalty provisions for a contravention of ss 3(2); (5); 4; 5(1); 6(2); (3); 7(2); 8(2) and 11(1).
- The availability of compensation should follow the scheme existing in the Residential Tenancies Act and should not as is proposed be contingent upon the exercise of prosecutorial discretion.

In conclusion the lack of direct regulation of RTDs in Victoria is the cause of significant consumer detriment in this state. We reiterate the need for prompt regulatory intervention.

If you wish to meet with us or discuss this letter, please contact Lee Hansen on 9411 -1444.

Yours sincerely,



Mark O'Brien

Chief Executive Officer

Tenants Union of Victoria