



McAuley Community Services for Women

A ministry of the Sisters of Mercy

Residential Tenancies Act Review – Property Conditions Issues Paper

McAuley Community Services for women welcomes the opportunity to provide a submission to the Property Conditions Issues Paper (the Issues Paper) as part of the Residential Tenancies Act Review. We have limited our comments to the issues relating to women and children's risk of homelessness and difficulties associated with exiting homelessness and family violence.

About McAuley Community Services for Women

McAuley Community Services for Women is a ministry of the Institute of the Sisters of Mercy of Australia and Papua New Guinea.

McAuley accommodates and supports women and children who are experiencing chronic disadvantage through the impact of family violence and homelessness. We work towards the prevention of further incidents of family violence and risk of homelessness and support women who are subject to homelessness through a number of key programs. In 2015 we supported 1,000 women and children through our wrap-around accommodation and support. We have around 28 houses (80-bed capacity) which we use as transitional housing before women exit either into public housing, private rental accommodation or to return home.

McAuley Care is a twenty- four hour crisis service for women and their accompanying children who are experiencing family violence. The program provides women with safe accommodation, and practical, legal and emotional support. McAuley Care encompasses five refuges as an extension of the service which enables us to provide longer term support for those who need it.

McAuley House supports women who are homeless or at risk of homelessness and who are living with chronic mental illness. McAuley House provides safety and security in a community environment where women can develop the skills and capabilities required to live independently.

Specific to the review

We note and support the RCFV final report findings that the impact of family violence on residential tenancies are significant. The RCFV has also recommended that the review of the Act consider amendments similar to those proposed in South Australian legislation, which would:

- Empower VCAT to make an order creating a new lease to allow a family violence victim to remain at the property, without requiring a final family violence intervention order
- Provide a clear mechanism for apportioning liability to ensure that victims of family violence are not held liable for rent (or other debts) that are properly attributable to perpetrators, and
- Enable victims to prevent their personal details from being listed on a residential tenancy database, where the listing relates to a breach that occurred in the context of family violence.¹

We concur that these steps go some way to ensuring that perpetrators, and not victims, are held responsible for damage they cause to rental properties.

¹ See recommendation 116 of the RCFV's final report, accessible at <http://www.rcfv.com.au/Report-Recommendations>.

Streamlining red tape

Anything that gets rid of red tape and streamlines the system to support women living in family violence situations, or escaping family violence is to be welcomed.

McAuley welcomes any changes to the Act, as far as property conditions are concerned, that result in only the perpetrator being liable for damage to a property arising from domestic violence, regardless of whether they are listed on the lease agreement. Perpetrators should also be liable for lease break fees.

Recommendation

We recommend that a definition of family violence be inserted in to the Residential Tenancies' Act which reflects the definition of family violence under the Family Violence Protection Act. This would enable a tenant who has been affected by family violence, but has not obtained an intervention order, to make property modifications and to be better protected in all aspects of the Act.

Property modifications

Currently a woman with a family violence safety notice or intervention order that **excludes a tenant** from the address can change external door or window locks without the landlord's consent. This also extends to instances where the affected person's name is on the lease and the perpetrator is not on the lease. In all cases, the locks are **not** part of a master key system.

There are several points to note: the Tenants Union of Victoria advises that to prevent the perpetrator getting a copy of the new keys from the landlord, the affected person should give the landlord or agent a certified extract or copy of a family violence safety notice or intervention order that excludes the perpetrator from that address. We support this advice.

In addition, if the perpetrator's name is on the lease and they are **not excluded** from the property in a family violence safety notice or intervention order, they have to be given a copy of the new keys. Also, they are also to be given a copy of the new keys if they are **no longer excluded** from the rental property because the IO or safety notice has ended.

As the RCFV final report² noted, under section 64 of the RTA a person affected by family violence who may wish to increase security on the property, for example, by installing video cameras, requires the landlord's consent to do so. The landlord can refuse to allow the modification, regardless of the reason and regardless of the fact that tenants are required to pay for the cost of restoring the property when they vacate. This effectively means that even if a person is affected by family violence they have no right to alter a rental property to increase their personal security.

Recommendations

McAuley recommends that the Act be changed to ensure that a perpetrator does not receive keys at all regardless of the status of the IO or safety notice.

Further, we also note that paperwork can get lost and that landlords may not understand the relevance of an IO or family safety notice. We recommend that landlords (private and public) should receive regular professional education about family violence situations.

² Royal Commission into Family Violence: Report and Recommendations, page 114.

We recommend that section 64 of the RTA be amended to state that the landlord must not unreasonably withhold consent to a request to modify the rental property, when modifications are requested to improve the security of the rental property, and the tenant is affected by family violence.

Liability of damage

The DHHS policy states that they will generally not claim compensation against a tenant for property damage where the damage was caused by “the criminal actions of a third party and the tenant could not prevent it from occurring, for example, family violence.

However, as attested by the Tenants Union of Victoria at the Royal Commission into Family Violence, there are many cases where the policy is not followed.

Recommendations

DHHS housing staff should be provided with training on their policies regarding tenant damage and family violence.

DHHS should not issue any further compensation claims against tenants which are not reduced for depreciation or that claim for fair wear and tear.

DHHS policies should be reviewed to ensure that outstanding charges do not prevent people affected by family violence from accessing public housing in the future

Specifically, we encourage consideration be given to change to the Act to ensure liability for damage is not attributed to a ‘victim’ of family violence. Any liability should rest instead with the perpetrator, where the damage is the result of family violence.

Tenancy databases

Currently a tenant may be listed on a tenancy database as a result of family violence. For example, if a perpetrator of family violence deliberately causes damage to the rental property, this can lead to a Notice to Vacate being given to all tenants. If the landlord applies to VCAT for a possession order, and VCAT is satisfied that there are grounds to give the Notice to Vacate, then VCAT must grant a possession order against all tenants. As a result the tenant affected by family violence could be listed on a tenancy database.

McAuley has anecdotal evidence about the impact of tenancy databases from the women the organisation supports in McAuley House: there are many examples of women becoming homeless, living in insecure housing, in cars or having to move interstate to escape rental history.

Recommendation

We recommend that the RTA be amended to enable a tenant to make an application to VCAT for an order that they be removed from the tenancy database because the incident that was listed occurred due to family violence. This is in accordance with the Royal Commission into Family Violence (2016) which found that the review of the Residential Tenancies Act should:

- ‘enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence’.

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