



REIV THE STANDARD
FOR SUCCESS

SUBMISSION

REGULATION OF PROPERTY
CONDITIONS IN THE
RENTAL MARKET

August 2016



ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are members of the REIV. These members are located in city, rural and regional areas.

A key component of the REIV membership is the property management sector. The REIV represents the majority of property managers in Victoria. The REIV's property managers, in turn, represent a significant number of residential landlords across the state.

Besides property management, members specialise in a range of real estate fields, including: residential sales, commercial and industrial sales, auctions, business broking, buyers agency, owners' corporations management and valuations.

Introduction

The Residential Tenancies Act (RTA) and the associated legislation is of significant importance to our members. More than 1,200 of our members belong to the REIV Property Management Chapter, dedicated to the management of residential rental premises.

In responses to the Regulation of Property Conditions in the Rental Market issues paper, the REIV has consulted the RTA Working Group comprising senior property managers.

General Comments

Minimum standards for rental properties is a reoccurring theme in this issues paper. The REIV strongly rejects the need for prescribed standards as a minimum standard for residential property is already established in Victoria - as set out in the Victorian Building Regulations and Codes. It is unreasonable to suggest that higher property standards should apply simply because a property is being rented out.

It is also important to note that additional requirements imposed on landlords - such as energy efficient appliances - will undoubtedly result in higher rents across the state.

REIV RESPONSE

Regulation of Property Conditions

1. To what extent do the rights and responsibilities for landlords and tenants in respect of property conditions strike the right balance?

Empirical evidence from REIV property managers suggests that the overwhelming majority of landlords maintain their investment properties in a condition which meets and often exceeds tenants' expectations. This is supported by figures from Consumer Affairs Victoria (CAV) where 68 per cent of tenants described their property as being in an 'excellent' or 'good' condition when they moved in. Similar ABS data shows that in 2013-14 the structural condition of the majority of private Victorian housing (83.6 per cent) was reported to be good, with no major structural problems. It's also important to note that Victoria currently requires landlords to maintain a property in 'good repair'. This is an exceptionally high legal standard of responsibility and landlords are obliged to maintain the property in this condition throughout the tenancy.

Feedback from REIV property managers also indicates there is a need for further clarity around standards of cleanliness, especially at the end of a tenancy. The REIV would support the inclusion of a definition of 'reasonably clean' in the Residential Tenancies Act and would like to see this amended to require professional cleaning at the conclusion of a tenancy. Cleaning of a professional standard would greatly reduce the number of disputes between landlords and tenants, especially at the beginning and end of tenancies.

The REIV also firmly supports the existing legislation regarding modifications in rental properties - whereby any modifications being made to the rental property must have prior approval from the landlord. A rental property is a significant financial asset for landlords and any modifications undertaken without consent may impact on landlords' ability to relet premises. The current legislation requires the outgoing tenant to return the

property to the same condition as it was on entry (taking into account fair wear and tear). It should be noted that, while this should take place, it does not always happen.

Substantial damage caused by the tenant, especially towards the end of a tenancy, is another issue of concern. At present, landlords and property managers are often required to make a compensation claim against the bond at the Victorian Civil and Administrative Tribunal (VCAT). Under current legislation, landlords must provide invoices for works carried out to rectify the damage, rather than trade quotes for the planned works. This process results in the landlord being further out of pocket as they must pay the repair costs upfront and are not guaranteed to be awarded compensation by the Tribunal Member.

2. What areas (if any) should be added to, or removed from, existing rights and responsibilities?

As above, the REIV considers it necessary that professional cleaning be included as a tenant responsibility upon the conclusion of a tenancy.

The REIV does not support the implementation of mandatory energy efficiency standards within the private rental market. The implementation of any such standards would be at a significant financial cost to landlords, with no way to recoup this expense without increasing rents across the state. The REIV does not envisage a high level of voluntary take-up unless the scheme is heavily subsidised by Government. Furthermore, it's unreasonable to require rental properties to be of a higher standard than the current building code. The REIV firmly believes there should only be one standard for residential property and the fact that a property is rented out should not require a higher standard.

3. What can Victoria learn from other states and territories in the regulation of residential property conditions?

Feedback from REIV property managers indicates the existing regulation of residential property standards and conditions is comprehensive and largely acceptable. This regulation, encapsulated in the RTA legislation, adequately informs all stakeholders of their rights and responsibilities.

However, there is scope for Victoria to further clarify some areas. In particular, the regulation of smoke alarms in rental properties is a key safety issue which requires additional focus in the Act. The REIV suggests Victoria clearly outline that landlords are responsible for the installation, maintenance and service of smoke alarms.

In addition, the REIV would like to see amendments to the property conditions regulations, ensuring that the condition of a property at the start of a tenancy is included (for example, a professionally cleaned, older style property with basic amenities). Feedback from REIV property managers suggests that some tenants may apply for a more affordable, older style property and then request multiple adjustments, which would have been expected of a more expensive rental property. The REIV also believes that by referencing the condition of the property it will assist in providing clarity around standards of cleanliness during the tenancy and at the conclusion of the tenancy.

4. What does the term 'reasonably clean' imply? What would be the advantages and disadvantages of defining it?

The REIV considers it imperative that 'reasonably clean' be defined within the Act. Greater clarification around this terminology would reduce the number of applications being made before VCAT as it would establish a clear standard for all parties. Standards of cleanliness are particularly important at the end of a tenancy, as landlords generally need to relet their rental premises in a timely manner. In this way, the REIV supports the introduction

of professional cleaning at the conclusion of a tenancy – as well as the beginning of a tenancy if a tenant has not previously occupied the property. Furthermore, this would also ensure the property is in a high standard for any incoming tenants.

5. How well do the provisions for security features in the Act meet community needs and expectations?

While existing legislation requires the provision of locks on all external doors and windows, it is important to note that the type of locks to be used is not prescribed (i.e. deadlocks) and nor should it be prescribed. In the case of windows, the REIV considers keyed locks to be impractical. Anecdotal evidence from REIV property managers suggests the majority of windows in rental properties were not designed, built or supplied with keyed locks but instead have mechanisms that prevent them from being opened from the outside. Requiring key locks on windows prevent them from being opened on the inside in the case of a fire emergency, unless the key is left in the lock which defeats its purpose. In addition, the provision of multiple keys for the one property also present a major key management challenge for agents and tenants. In this way, the REIV considers the existing Section 70 terminology to be generally adequate in meeting the needs and expectations of the community.

However, the REIV considers it important that legislation be revised to address the duplication and cutting of keys. While a former tenant may return all keys supplied to them, it does not deal with the fact that there may be other copies in existence, which poses a security issue.

6. Do the current responsibilities for charges related to access to services strike the right balance between landlords and tenants?

The REIV considers the current legislation inadequate in outlining stakeholders' responsibilities regarding the provision and access of telecommunication services. Feedback from REIV property managers indicates there

is a significant level of confusion between tenants and landlords regarding who is responsible for the connection of services, particularly in instances where a phone/ broadband line is available but the telecommunications company has disconnected it. Furthermore, while a tenant may install additional infrastructure to allow for these services, such as is required for PayTV, existing legislation is not clear on who is responsible at the conclusion of a tenancy for rectifying any damage caused by the original installation process. The connection and also disconnection of these services – paid for by the tenant and requiring landlord approval – must be stipulated in the Act. This is a key part of modernising the RTA.

7. How should responsibility for access to telecommunications infrastructure be balanced as between landlords and tenants?

Given the popularity of 3G/4G devices and mobile phones, used by a significant number of tenants, the REIV considers it unreasonable for landlords to be expected to pay for the connection for additional telecommunication and entertainment services. As outlined above, any connection fees should be borne by the tenant, with prior permission from the landlord. In addition, tenants must be responsible for rectifying any damage caused by the installation, use or removal of any services (such as PayTV).

8. To what extent could the delivery of telecommunications or cable infrastructure be seen as a joint responsibility between tenants and landlords?

The REIV does not consider the installation of telecommunications or cable infrastructure to be a joint responsibility between stakeholders as these services are usually switched off or disconnected (by the relevant service providers) at the end of a tenancy. The existence of this cabling does not necessarily add value to a landlord's property, as it is often unsightly and any damage caused during installation may not be rectified by the outgoing tenant.

9. What are the arguments for and against prescribing minimum standards for private rental housing?

The REIV does not consider it necessary to prescribe minimum standards for private rental housing as tenants are already afforded significant legal protection through the provision of 'in good repair'. Furthermore, a minimum standard for residential property in Victoria is already established, as set out in the Victorian Building Regulations and Codes. It is unreasonable to suggest that higher property standards should apply simply because a property is being rented out. Furthermore, if higher standards were to apply, property managers and landlords are unlikely to be qualified to establish whether rental premises are compliant. It's important to note that any additional costs may be reflected in rental increases.

10. If minimum standards were to be prescribed, what requirements should be included?

As outlined above, the REIV does not support the implementation of minimum standards in the private rental market as these are already set out in existing legislation (Victorian Building Regulations and Codes). If minimum standards were to be implemented, the REIV would strongly encourage the removal of the term 'in good repair' from current legislation.

11. What would be the impact on landlords and tenants of prescribing these standards?

The REIV considers the introduction of minimum property standards to be redundant as standards are already outlined in the Victorian Building Regulations and Codes. If higher standards were to be implemented it would be at a cost to landlords, which would undoubtedly be passed on to tenants. Alternatively, property investors may choose to leave the market, resulting in reduced housing stock and higher rents.

12. If minimum standards are prescribed, how should compliance with the standards be monitored and enforced? What are the barriers to ensuring that a

property complies with minimum standards?

This question is redundant as it is covered by the REIV's response to questions 9, 10, 11 and 12. Additional standards are not required and should not be introduced.

13. To what extent does the condition report provide an effective means of recording the condition of the property at the start of a tenancy?

At present, property managers and private landlords are required to complete an entry condition report when a bond has been taken as security for a rental property. The REIV would like to see this requirement to complete a condition report mandated, whether or not a bond is taken. The REIV believes the ability to compile a comprehensive condition report is now infinitely greater because of the availability of digital photography. Digital images enable property managers to capture and record the property's condition accurately and effectively and can assist in resolving disputes at the conclusion of a tenancy.

14. What issues does the format, content and timing of the report raise for landlords and tenants, and how might the report be improved?

Feedback from REIV property managers indicates the format, content and timing of the condition report is adequate in meeting the needs of all stakeholders. Tenants already have the right to request another inspection of the property before they take possession and have three days to disagree with the content of the report.

15. How should the tenant's duty not to damage a property be further defined? What would be the advantages and disadvantages of defining the tenant's duty not to damage a property in greater detail?

The REIV believes the tenant's duty not to damage a

property could be further defined by making reference to the condition of the premises at the commencement of the tenancy (for example, a professionally cleaned, older style property with basic amenities). While challenging, there is also a need for the legislation to outline the difference between 'fair wear and tear' and damage. Furthermore, the REIV considers it imperative that VCAT legislation be amended to allow landlords to present quotes to repair damage caused by tenants at the Tribunal, rather than invoices. Under existing legislation, landlords are required to pay to repair damage caused by tenants, before they can seek compensation from the tenant at VCAT, which may not then be granted, leaving landlords heavily out of pocket.

16. Should the same standard of care expected of tenants apply to both the property itself and any common areas?

The REIV considers it crucial that the same standard of care that applies to the rental property, should also apply to common areas. For properties within an owners' corporation, any damage caused in common areas will fall to the responsible lot owner – the landlord. In this way, damage in common areas that can be assigned to a tenant, should be paid for by that individual.

17. To what extent does the prohibition on malicious damage, and its current interpretation, enable landlords to respond to risks to their property?

Anecdotal feedback from REIV property managers suggests the current VCAT interpretation requires ongoing continuous malicious damage. However, this interpretation does not align with legislation which does not prescribe that damage needs to be ongoing. In this way, VCAT's interpretation prevents landlords being able to respond to risks in an appropriate manner. This area, like many others in the Act, needs to be clarified by the Government with VCAT.

18. What other steps, in addition to those identified in the RCFV's recommendations, can be taken to assist victims of family violence in a tenancy situation where damage has occurred?

In addition to the steps identified in the RCFV's recommendations, victims of family violence already have access to Family Violence Flexible Support Packages, which are available immediately up to the value of \$7,000. In instances where the premises have been damaged in a family violence matter, the REIV also recommends that landlords have access to the Victorian Property Fund (VPF) to recoup any losses (such as rent arrears) or rectify any damage.

19. What do landlords and tenants think about the current arrangements in the Act, which require the landlord's consent for any fixtures, renovations, alterations or additions?

Feedback from REIV property managers indicates the current legislation relating to landlord consent is entirely appropriate. Fixtures, renovations, alterations or additions can devalue a landlord's asset and once installed or altered, it's extremely difficult to ensure the outgoing tenant rectifies the change to the same previous standard. In addition, as the landlord carries the responsibility for the premises under the building code, it is only logical that their consent is necessary.

20. What are the property modifications (if any) that a tenant should be permitted to make without first obtaining the landlord's consent, and why?

The REIV does not support any property modifications being made without the tenant first obtaining the landlord's permission. It's important to note that a rental property is a significant financial investment for landlords and any unauthorised modifications may devalue the property and make it harder or even impossible to relet. Furthermore, as authorised modifications are an obvious

subject for dispute, to allow some modifications without consent will open the door to a range of applications before VCAT.

21. What are the impacts on landlords of allowing property modifications without consent?

Unauthorised property modifications have a significant financial impact on landlords as it can devalue their property, making it harder to relet in a timely manner, or sell if the owner is planning to market the property. The modifications may not be of a professional standard and the tenant may not have the financial capability to restore the property to its original condition. In this way, modifications may also not be compliant with other regulations such as the building code.

22. How can tenants with a disability and their landlords be better informed about the legislation, guidelines and processes that support improved access to dwellings and the installation of modifications for people with a disability?

At present, disabled tenants have access to Government funding for the installation of modifications to make a property suitable for their needs. Anecdotal feedback from REIV property managers indicates there are no issues with modifications for disabled tenants – as long as landlord consent is provided – as these individuals are generally mid-term or longer-term tenants. In instances where the landlord would like the property restored to its original condition, this is clearly required. Greater education for stakeholders would ensure all parties are better informed.

23. Where family violence is an issue, what other action, in addition to that identified in the RCFV's recommendations, can be taken to assist victims of family violence in a tenancy situation where additional

security features may be required?

At present, victims of family violence are able to change master locks and add additional security measures (without a landlord's permission) if an intervention order has been granted. Furthermore, the availability of Family Violence Flexible Support Packages enables victims to relocate to new rental premises.

24. What are the benefits and limitations of the tenant's current duty to maintain the property by ensuring it remains reasonably clean during the tenancy?

The REIV considers it necessary for the Act to provide greater clarification around standards of cleanliness during a tenancy. Under existing legislation, there is a substantial amount of confusion between stakeholders in regards to what maintaining a property in a reasonably clean condition entails. The REIV recommends including examples of the tenant's responsibilities, such as garden maintenance and changing lightbulbs, in the Red Book.

25. What (if any) additional matters should be specifically required of tenants in maintaining the property?

As stated earlier, the REIV supports legislation being amended to require tenants to engage professional cleaning services at the conclusion of a tenancy. This should also include professional steam cleaning of carpets, and paid cleaning of the home, to ensure the property is of an acceptable standard for the next tenant.

26. How effective are the processes in the Act to complete repairs, including:

a) Is it useful to distinguish between urgent and non-urgent repairs, and if so, how well do the processes prescribed in the Act for undertaking these repairs provide for the differences in each case?

The REIV considers it crucial that the Act continues to

distinguish between urgent and non-urgent repairs. Feedback from REIV property managers indicates there is a common misconception that urgent repairs must be attended to 'immediately', which is not a realistic timeframe. Often delays in repairs and/or maintenance are necessary when replacement parts aren't available and need to be ordered. This is beyond the control of landlords and agents. In this scenario, the tenant has the right to seek compensation from VCAT and is entitled to a hearing at the Tribunal within 24 hours. It's also worth noting that tenants can undertake urgent repairs up to the value of \$1,800.

b) What additional steps could be taken to reduce the causes of disputed repairs?

Greater clarification outlining realistic timeframes for repairs/maintenance to be carried out would assist in reducing the number of disputed repairs. In instances where a tenant has engaged tradesmen to carry out maintenance or repairs, the REIV considers it imperative that the tenant be required to provide copies of invoices at VCAT in much the same way as landlords are presently required to.

27. How effective are the existing processes for addressing repairs and maintenance issues? What additional measures or information would benefit the parties when a repairs or maintenance issue arises?

Feedback from REIV property managers indicates existing processes are appropriate.

28. What are the benefits and limitations of the landlord's duties to maintain the property, as currently prescribed in the Act?

At present, landlords are required to maintain their rental premises to a very high legal standard, defined in the Act as 'in good repair'. However, existing Victorian legislation

fails to take into account the condition of the property at the commencement of the tenancy. As rental properties with basic amenities are often more affordable, it's unreasonable to expect landlords to carry out substantial maintenance or repairs beyond the initial condition without a resultant increase in weekly rent, reflecting the cost of these repairs.

29. What (if any) additional matters should specifically be required of landlords in maintaining the property?

The REIV considers landlords responsible for the installation, maintenance and annual service of smoke alarms in rental properties. In addition, the Institute supports faulty smoke alarms being classified as an urgent repair. The REIV would also like to see bi-annual carbon monoxide testing as well as the introduction of a pool safety certificate.

30. Are any specific rules required in respect of smoke alarms and, if so, what should these provide for?

As outlined above, the REIV considers the installation, maintenance and annual service of smoke alarms in rental premises to be the responsibility of landlords. The REIV also supports a non-functioning smoke alarm being classified as an urgent repair.

31. Are there better mechanisms available to inform tenants and landlords about the schemes and avenues available to address maintenance and repair issues?

The REIV considers the information services provided by Consumer Affairs Victoria (CAV), REIV and a range of independent third-party organisations to be adequate and effective in informing all stakeholders in relation to avenues available to them.

32. What are the specific repairs and maintenance needs of parties to a rooming house, caravan park and

site agreement, and how well are these needs currently met?

As the REIV is of the opinion rooming houses and caravan parks should form a separate Act, rather than be included within the RTA, the Institute has opted to not respond to this question.

33. Should different rules be adopted for these types of arrangements, and if so, what should these be?

As outlined above, the REIV has opted to not respond to this question.

34. What issues (if any) does the absence of an explicit duty relating to the condition of a rental property at the end of a tenancy raise for landlords, tenants and property managers?

At present, there is a considerable level of uncertainty surrounding the definitions of 'reasonably clean' and 'fair wear and tear'. The REIV supports tenants being required to engage professional cleaning services at the conclusion of a tenancy. This would also ensure the ingoing tenant receives the property in a high standard of cleanliness. The condition of a rental premises at the end of a tenancy heavily impacts on landlord's ability to relet the property in a timely matter. The REIV strongly supports the property being returned in the same condition as at the start of the tenancy, with the exception of fair wear and tear.

35. How effectively do the current remedies in the Act address problems relating to property conditions and standards? What alternative or additional tools or initiatives could assist parties to independently resolve disputes?

Feedback from REIV members indicates VCAT already favours tenants in addressing problems relating to conditions and standards of property. This is especially

the case in instances where a tenant has been issued with a breach notice for failing to maintain the property in a 'reasonably clean' condition. VCAT Tribunal Members often refer to a 'Saturday clean' and a 'Spring clean'. A 'Saturday clean' is never an acceptable standard at the conclusion of a tenancy.

36. What other ways could vulnerable and disadvantaged tenants be better supported to independently resolve disputes?

Vulnerable and disadvantaged tenants already have access to a range of free information and advice services provided by a range of providers, including the Tenants Union of Victoria and Victorian Legal Aid. It's important to note that landlords are not afforded access to similar services.

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