

ECCV Submission
on
Victorian Government's Plan for Fairer, Safer Housing and Review of the
Residential Tenancies Act 1997
Regulation of Property Conditions in the Rental Market
August 2016

The Ethnic Communities' Council of Victoria Inc. (ECCV) is the voice of multicultural Victoria and the peak policy advocacy body for eight regional ethnic community councils and up to 220 members including ethnic and multicultural organisations across Victoria since 1974. For over 40 years, we have been the link between multicultural communities, government and the wider community.

ECCV is pleased to contribute to the Victorian Government's Plan for Fairer, Safer Housing and review of the Residential Tenancies Act 1997 (RTA) on the matter of regulation of property conditions in the rental market including landlord and tenant responsibilities for the condition of a property throughout a tenancy.

ECCV has a strong history in advocating for the rights of multicultural communities on a broad range of issues relating to health, workforce participation and social cohesion.¹ ECCV also has a strong role in informing industry practice and influencing Government and relevant stakeholders on a range of issues concerning equitable access and inclusive framework development. For example, ECCV was a member of the Consumer Affairs Victoria Renting Advisory Committee and contributed to the development of resources on renting for vulnerable and disadvantaged groups in CALD communities.²

This submission builds on previous activities conducted by ECCV and through recent consultations with culturally diverse support and service providers including consultations with five regional Ethnic Community Councils, Southern Migrant and Refugee Centre and housing service and primary health prevention providers including WAYSS Ltd and WHISE. This submission focuses on culturally diverse people seeking housing and their experiences.

ECCV is pleased to present our recommendations for consideration to enable equitable access to safe, secure and affordable housing.

Background

In its *Regulation of Property Conditions in the Rental Market Issues Paper*, the Government acknowledges that both the market place and the population accessing rental properties have

¹ ECCV, [Submission to the Victorian Gender Equality Strategy](#), March 2016; ECCV, [Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work](#), November 2015 and ECCV, [Submission to the Review of Victoria's Charter of Human Rights](#), June 2015.

² Consumer Affairs Victoria, [Understanding Renting/Dari](#), July 2016

diversified.³ A significant change in the market place is the number of people and type of people seeking private rental and social/public housing. Refugee and asylum seeker populations, especially those suffering post-traumatic stress from their migration experience and with concomitant disability, have been reported as some of the most vulnerable to homelessness in ECCV's consultations.

ECCV's feedback also found that even though there is largely a positive relationship between property managers and tenants, the reliance on a broker type role, where advocacy services step in to educate agents and landlords on their obligations and build relationships to secure housing and respond to requests for repairs was a consistent feature. This is especially true for asylum seeker and refugees groups where racial perceptions inhibited access to rental properties in the first instance or where overt racism slows landlord response to addressing issues with tenanted properties.

ECCV consultations also identified that there are significant barriers for people in vulnerable circumstances enacting their legal rights when there is an issue with the rental property. The most significant barriers include language barriers, gaps in knowledge of tenants' rights and concerns for security of tenure and fear of retribution should they raise their concerns.

Case examples provided to ECCV identified instances where landlords took advantage of tenant's vulnerabilities including:

- denying a tenant access to facilities;
- ensuring properties are safe and secure;
- timeliness of maintenance and repairs; and
- security of tenure.

ECCV feedback was that though service providers believed the Act is a robust and good piece of legislation, and whilst most landlords do the right thing, there is a sentiment that 'there are dodgy providers working under the law'. In these instances, it is the policing of existing legislation, not the creation of new legislation that is required to ensure that the health and safety of tenants is a primary consideration, particularly in the private rental market.

A concern raised was that the need for compliance management must be balanced with the need for supply of safe and secure housing for vulnerable people at risk of homelessness. There is a genuine fear of retribution and instances where agents have discontinued working relationships with service providers due to complaints they have raised. This places CALD tenants at further disadvantaged.

Key Issues

1. Landlords' obligations to ensure rental properties are safe, secure and liveable, including whether minimum standards should be prescribed for private rental housing

The Act currently stipulates that landlords must ensure that the property is reasonably secure, clean and with access to services. The issue arises when the tenant is not aware of their rights, feels that

³ Residential Tenancies Act Review, [Regulation of Property Conditions in the Rental Market Issues Paper](#), July 2016, page 4.

they have no recourse and in precarious housing situation. An example provided to ECCV is provided below:

Case Study – Settlement Services provider example:

A client was living in an old house and during her tenancy, the landlord was doing some repairs and remodeling of several rooms. She had to use a portable stove for several weeks while they redid the kitchen. Her 5 kids had to sleep in 1 bedroom at one stage while a room was renovated. When the process was finally finished, the house was really nice. After a few weeks, she was given notice to vacate, because of course, now the house was nice and new looking, he could get higher rent. So her life was in chaos for a few months, and she didn't even get the reward of living in the nice new rooms. I believe he should have provided other accommodation for her, or given her notice to vacate before the repairs were begun so she could move, she wouldn't have stayed thinking she would not get to enjoy the new rooms once completed.

This Settlement Services client belongs to a significantly disadvantaged population, single mother with multiple children, further marginalised by the current housing situation which puts her and her children at greater risk. This includes impacts on health and social outcomes for the family including impact on stable education and employment, social participation, exacerbation of financial hardship and entrenchment of disadvantage among culturally diverse communities.⁴

The above example raises issues across a number of areas of the Act, including a landlord's limited right to enter a property and denying a tenant access to facilities (including bedrooms and limited kitchen). Though the tenant may have recourse via compensation for the landlord denying them quiet enjoyment of the property and use of all the facilities due to the renovations, it is incumbent on the tenant's knowledge of their rights under the Act and their level of confidence and capability to pursue the matter. Both of these levels remain low among culturally diverse tenants.

The Act also prescribes the requirement for a property to be able to be secured, with lockable doors and windows that can be secured from the inside. There is no indication that the safety and security of the tenant was maintained through the construction phase of the property.

In addition, the Act is also reliant on specialist complimentary legislation to manage the health, safety and security of tenants where significant construction works are taking place. In this particular case study, the health and building standards applicable to landlords are the *Building Act 1993*, *Building Regulations 2006*, and *National Construction Code*.⁵ A detailed working knowledge of multiple building codes is necessary for the tenant to pursue their rights placing tenants with a

⁴ Review of Residential Tenancies Act, [Security of Tenure Issues Paper](#), 2016 page 10.

⁵ Review of Residential Tenancies Act, [Regulation of Property Conditions in the Rental Market Issues Paper](#), 2016, page 48.

language barrier and lack of knowledge of Victorian and /or Australian legal framework at a significant disadvantage.

The Act states that responsibility for the condition of the property at the beginning of a tenancy rests with the landlord. To uphold this, minimum standards on condition of the property need to be prescribed to ensure safety, security, longevity of tenancy and minimal disruption to the tenant at the commencement of the tenancy.

Refugee and asylum seeker tenants are reluctant to speak up as they are fearful of having nowhere to live. This often results in refugees taking what's left in the housing stock or living in conditions that they should not have to.

Recommendation 1

ECCV recommends that minimum standards should be prescribed for private rental housing to ensure that repair and significant renovation work does not impinge on the tenant's ability for quiet enjoyment of the property, nor compromise the tenants' health, safety or access to services and facilities.

2. Tenants' obligations to avoid damage to the property, other than fair wear and tear

ECCV's consultation found that the condition of the property at the end of the lease should remain with the tenant. Consultation identified that there are instances of accidental damage to property and, that in these cases responsibility for the repair rests with the tenant.

Another key finding of the consultation was the need for accurate Condition Reports. Language barriers can make Condition Reports difficult to understand and often the reports are completed by agents/landlords. This in turn has implication for bond return where successful return of the bond is reliant on a satisfactory Condition Report after vacation of the property. Delayed bond return has implications for the tenant who often needs the money to pay the next bond.

To ensure that culturally and linguistically diverse (CALD) tenants have a clear understanding of the contents of the Condition Report and are able to agree on the report, service providers recommended that these reports be accompanied by photos to overcome the language barrier.

Recommendation 2

ECCV recommend that the Condition Report of a property prior to commencement and at the end of a tenancy include photographs, copies of which should be provided to culturally diverse tenants where the tenant experiences language barriers.

3. Tenants' ability to modify the property, including to support tenants with a disability

The Act currently has provision for a tenant to make minor modifications with a landlord's agreement as long as the property is restored to its original condition on vacating the property. Our feedback has been that where the modifications have been minor, landlords have not pursued restoration to original condition.

Though landlords are generally accommodating of minor modifications, feedback received by ECCV indicate that when tenants require significant modifications, the cost of such modifications to be installed and removed is very prohibitive. This scenario also disadvantages disabled tenants and puts them at risk of being discriminated against when searching for a property. ECCV recognises that this situation also applies to non-culturally diverse tenants in Victoria.

4. Whether standards of cleanliness, maintenance and repairs expected of both landlords and tenants should be clarified – including who is responsible for maintenance not specified in the RTA, such as replacing smoke alarm batteries

ECCV received feedback that some settlement service providers are taking it upon themselves to educate newly arrived refugees and asylum seekers on how to change batteries in smoke alarms, light globes and relighting gas pilot lights.

This sits within the greater issue of maintenance issues which need greater intervention. Where complaints have been made in these circumstances, the settlement service provider has experienced retribution, such as the agent severing their relationship and not considering future tenancy applications. This scenario is disappointing and has the potential to set up future tenants to accept whatever they are offered, including where this may place the tenant's health and safety at risk.

Minimum standards for cleanliness and fair wear and tear are not prescribed in the Act and are reliant on a test of 'reasonableness'. While ECCV appreciates the need to not over-regulate the industry, the difference in expectations between landlords and culturally diverse tenants creates a situation for potential conflict with significant consequences.

Minimum cleanliness, maintenance and repairs standards should be articulated in the Act. This should include provision of a working smoke alarm and maintenance service schedules for appliances such as heaters, stoves and cook tops. Listing these obligations under the Act would serve as a preventative measure and not be reliant on common law to enforce the landlord's responsibility to 'take reasonable care to put and keep premises in a safe state of repair (Gaurdon J); and to 'take reasonable care that the tenant not suffer injury'' (sic).⁶

⁶ Review of Residential Tenancies Act, [Regulation of Property Conditions in the Rental Market Issues Paper](#), 2016, page 17.

An option would be to include a maintenance service history in property Condition Reports accompanied by photos of the property prior to the commencement of the tenancy and at periodic inspections.

Recommendation 3

Minimum standards for cleanliness, maintenance and repairs should require a schedule for wear and tear of fixtures and furnishings including service history for electronic and gas appliances.

5. Timeliness of repairs

A significant issue culturally diverse tenants face is language barriers and understanding their rights and responsibilities. This is highlighted when a repair is required on the property. Currently under the Act, a landlord has responsibilities to ensure urgent repairs are carried out on a priority basis once informed.

The requirement to be informed in writing is a serious barrier for non-English speaking tenants and is compounded where translating and interpreting services made available to real estate agents / landlords are seldom taken up and when tenants face discrimination based on race. The example below highlights this issue:

Case Study 2 – Health Promotion provider example:

Penny is a 35 year old single mother of 5 children. She arrived in Australia 2 years ago from a refugee camp in Kenya. Penny was referred to our home visiting program by her mental health worker for assistance with her basic settlement needs.

During the first few visits, I spent time getting to know Penny and her children until she felt comfortable enough to tell me about some of the issues she was facing. The most concerning of which was the fact that she did not have an oven in the property and hadn't for the past 5 months.

I enquired as to why she hadn't had an oven for so long and she told me that it had caught on fire and the real estate had not replaced it. She had called the real estate agent on several occasions to request that the oven be replaced but she told me that he had responded by saying she needed to learn how to speak English before he would speak to her. As a single mother, unfamiliar with the way the Australian housing system operated, Penny was afraid to pursue it as she thought that she may have been evicted. Instead, Penny used coals outside to cook on. I asked Penny for her permission to call the real estate agent.

When I called the real estate agent for the first time he seemed bothered by my call. He stated to me that 'she had the house rewired at a cost of \$4000, what more does she want?' It turned out that the reason for the oven fire was faulty wiring which I reminded him was not the tenant's fault. He then proceeded to say that if someone arrives in this country they should be required to learn English. At the end of the first conversation he still refused to install an oven into the property.

I called the Tenants Union of Victoria to get some advice on the situation. They advised me that this was considered an urgent repair which should have been rectified within 72 hours. With this information I went back to the real estate agent and ... he finally agreed to send someone to the property.

There was a great deal of tooting and frowning until eventually an oven was delivered to Penny's home. But there it sat for weeks, uninstalled. With more calls to the real estate agent and eventual threats of action by VCAT, the oven was installed 8 months after the original fire.

This is not an isolated situation. Unfortunately the current system only accommodates those who are literate in English and who are able to negotiate the process.

There are few resources available to CALD tenants which are accessible to them where the need is for face to face support, for example the Tenants Union of Victoria. The Tenants Union of Victoria provides advice and multi-lingual information, however is poorly located for CALD tenants located in rural, regional and outer east and south Victoria.

In the absence of strong advocacy services, the situation is exacerbated. Refugees and asylum seekers are reluctant to speak up as they were fearful of having nowhere to live. This often results in refugees taking what's left in the housing stock or living in conditions that they should not have to.

Recommendation 4

Agents and landlords must be required to give tenants information including out of hours contact for emergency repairs at the beginning of a tenancy which includes all items currently listed in the Act as an urgent repair. This information should be provided in an accessible format including languages other than English.

6. Appropriate penalties for non-compliance

Refugee and asylum seeker tenants lack an awareness of Australian standards for housing. Language barriers exacerbate their vulnerability to accepting 'whatever they can get'. Their vulnerability and difficulty in finding adequate housing places them in a position where they are less likely to report rental property issues for fear of homelessness and further marginalisation.

The case is particularly bleak for rooming house tenants with cases reported of overcrowding to the point that tenants are offered a roll up mattress in the kitchen as a bedroom facility or entire families living in just one room.

The feedback to ECCV has been that the Act has strengths which are let down by the lack of access to, and awareness of, culturally diverse tenants' rights and responsibilities. A gap in support for culturally diverse tenants requires more support from the government to avoid settlement providers being excluded from rental opportunities when raising property condition concerns.

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