**Tenants Victoria**

**Letter on rental apps – instructions for tenants**

1. **Fill in your details**
* Fill in your details to replace[WORDS IN BRACKETS LIKE THIS] in the template letter below.
* Choose from the examples at ‘A’ below,or add details about your own situation, to describe the background to the requests or demands to use a rental app at [BACKGROUND] in the letter.
* Feel free add details about your own specific circumstances.
* Feel free to delete sections that you do not want to include.

**A Examples to include at ‘Background’ in the letter**

* In a [LETTER/EMAIL] dated [DATE] [YOU/YOUR AGENCY] told me that there was no alternative option but to sign up to the rental app and that if I failed to do so this would risk the accrual of rent arrears and being issued with a notice to vacate.
* On [DATE], when I spoke to [YOU/AGENT’s NAME of your agency] about my concerns about this rental app, [YOU/AGENT’S NAME] advised told me I was required to sign up to the app as the agency was closing its trust accounts and would only accept payment via this app.
* On [DATE/DATES], [YOU/YOUR AGENCY] sent me an [SMS/EMAIL] again requiring me to sign up to this rental app, even though I had told [YOU/YOUR AGENCY] I would be seeking advice about this issue. This caused me distress and I felt harassed and pressured by this communication.
1. **DELETE ALL INSTRUCTIONS AND EXAMPLES BEFORE YOU SEND THE LETTER BELOW**

[DATE]:

[RENTAL PROVIDER’S OR AGENT’S NAME]

[COMPANY NAME IF SENDING TO AGENT]

[ADDRESS]

[SUBURB] VIC [POSTCODE]

**By email:** [RENTAL PROVIDER’S OR AGENT’S EMAIL ADDRESS]

Dear [NAME],

### **Re: Request to use rental app - contravention of *Residential Tenancies Act 1997* (Vic)**

### **[RENTAL ADDRESS]**

I am writing in relation to your request that I use [NAME OF RENTAL APP] (the **rental app**) to pay my rent. I have concerns about this application, as detailed below.

Further, I understand that the use of the rental app to facilitate rental payments may contravene the requirements of the *Residential Tenancies Act 1997* (Vic) (the **Act**) and the *Residential Tenancies Regulations 2021* (the **Regulations**).

I therefore ask that you please immediately stop making these requests and allow me to pay rent by other methods, as provided for in the Act.

**Background**

[BACKGROUND - INSERT DETAILS, IN DATE ORDER, TO DESCRIBE THE BACKGROUND TO THE REQUESTS/DEMANDS TO USE A RENTAL APP, AND YOUR COMPLAINT. SEE EXAMPLES AT ‘A’ ABOVE.]

**The law**

#### I note the following parts of the Act and Regulations:

* [INCLUDE THIS POINT IF YOUR RENTAL PROVIDER/AGENT SAID YOU CAN ONLY USE THE RENTAL APP TO PAY YOUR RENT. OTHERWISE THIS POINT CAN BE DELETED] [Section 42(4)](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s42.html) of the Act requires that the rental provider must ensure that a renter has access to a rent payment method that incurs no additional costs (other than bank fees or account fees payable on the renter’s bank account). I note that the rental app incurs additional costs for all forms of payment, as well as default fees. It is therefore an offence under [section 42(4)](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s42.html) of the Act to require that a renter exclusively use the rental app for rental payments.
* [Section 51(3)](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s51.html) provides that ‘a person’ (this includes a rental provider, their agent, or a third-party service), must not demand or receive from a renter a ‘charge’ (a payment) in relation to:
	+ the first issue of a [rent](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#rent) payment card under a [residential rental](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#residential_rental_agreement) [agreement](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#residential_rental_agreement); or
	+ the establishment or use of direct debit facilities; or
	+ any other electronic payment facility for payment of [rent](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#rent) under a [rental](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#residential_rental_agreement) [agreement](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#residential_rental_agreement).
* [Section 27B](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s27b.html) of the Act read with [regulation 11(d) and (e)](http://classic.austlii.edu.au/au/legis/vic/num_reg/rtr2021n3o2021397/s11.html) of the Regulations provide that the following are prohibited terms, and therefore void and unenforceable under [section 26A](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s26a.html):
	1. a term which requires a renter to pay rent in advance by a payment method which requires additional costs (other than their bank fees or account fees); and/or
	2. a term which requires the renter to use the services of a third-party service provider nominated by the rental provider (other than an embedded network)
* [INCLUDE THIS POINT IF YOUR RENTAL AGREEMENT (LEASE) SPECIFIES ANOTHER METHOD OF PAYMENT FOR YOUR RENT, OTHERWISE THIS POINT CAN BE DELETED] [Section 42(2)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/rta1997207/s42.html) of the Act specifies that rent is payable in the manner (if any) specified in the agreement. My agreement specifies that rent is payable using [INSERT THE PAYMENT METHOD IN YOUR RENTAL AGREEMENT]. Under [section 42(6)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/rta1997207/s42.html), the payment method can only be changed by agreement between myself and the rental provider. I do not agree to change the method to payment via the rental app.

It is prohibited under [section 501](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s501.html) to make a false or fraudulent misrepresentation in relation to the terms included in the rental agreement, or a matter affecting a person’s rights or duties under the Act. This is in addition to the general prohibition against false or misleading conduct in [section 18](http://classic.austlii.edu.au/au/legis/cth/consol_act/caca2010265/sch2.html#_Toc83652331) of the *Australian Consumer Law*.

#### **Offences under the Act**

I note the following are offences under the Act, and there are penalties associated with their contravention:

* To include a prohibited term in a rental agreement ([section 26A](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s26a.html));
* To not provide at least one free rental payment method ([section 42(4)](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s42.html));
* To demand or receive from a [renter](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#renter) a charge the establishment or use of direct debit facilities or any other electronic payment facility for payment of [rent](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#rent) under a [residential rental](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#residential_rental_agreement) [agreement](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s3.html#residential_rental_agreement) ([section 51(3)](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s51.html)); and
* To make a false or fraudulent misrepresentation in relation to the terms included in the rental agreement, or a matter affecting a person’s rights or duties under the Act ([section 501](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s501.html)).

#### **Request for action**

Until or unless otherwise agreed to by both parties, I request that all requests that I exclusively use the rental app for rent payments cease. I further request that you confirm agreement to the same in writing within 7 days of this [LETTER/EMAIL].

Should requests to exclusively use the rental app not cease, I may, without further notice to you, apply to VCAT for an order restraining you from contravening the Act, seek compensation, and/or report your conduct, and any offences, to Consumer Affairs Victoria.

Please contact me on [TELEPHONE NUMBER OR EMAIL] if you have any queries about this [LETTER/EMAIL].

Yours sincerely,

[YOUR NAME]