



**Tenants
Victoria**

THE MOULD REPORT

A Renter Snapshot



MAY 2023

TENANTS VICTORIA

About Tenants Victoria

Tenants Victoria is the peak body for the state's renters, who number almost 2 million people. Our vision is for a safe, secure and affordable home for Victorian renters in a fair housing system. For many renting is a permanent situation rather than a transition from the family home to home ownership. We believe all renters should be able to afford a home that allows them to live full lives and contribute to their communities.

Founded in the 1970s by renters, we aim to empower all renters and make sure their voices are heard in our advocacy. We work in partnership with other community legal centres and housing sector organisations, and strategically with government to inform policy development and enhance service delivery.

Our services include information, legal representation and advice, financial counselling, and outreach. We aim to make the housing system fairer in several ways. We advocate for practices and attitudes that respect renting and for policies and laws that support the rights of renters. We increase the skills of the community workers who assist renters. We provide information that encourages rental providers and real estate agents to act responsibly.

Acknowledgments

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Contact

Farah Farouque, Director of Community Engagement
farah.farouque@tenantsvic.org.au



Tenants Victoria Level 2, 255 Bourke Street, Melbourne Victoria 3000
ACNC and Community Legal Centre's Australia Accredited
ABN 36081348227 | ACN 081 348 227
Safe, secure and affordable homes
tenantsvic.org.au

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Introduction

‘My friends and family and I have taken to calling it the “Death Trap”. I feel so stuck here.’

This anguished response from a renter in suburban Melbourne, submitted to Tenants Victoria’s story portal on our website, speaks to a common problem: the insidious issue of mould that proliferates in too many rented homes.

Mould is one of the top complaints to Tenants Victoria. United Nations agency the World Health Organization has estimated that the prevalence of indoor dampness, linked to mould in dwellings, may affect 10% to 50% of housing across Australia.

Tenants Victoria receives complaints from renters about mould in buildings of all ages and types, across private, public and community housing settings. In permutations of black, grey, green, and white, often with a musty smell that for some people evokes the scent of putrid vegetables, plants, or meat, untreated mould can seriously impact renters’ physical and mental health. It can also cause lasting damage to personal property. Pets may be adversely affected, as one renter told us after an outbreak of mould that made them sick: ‘my cat was also treated for a fungal infection’.

Each winter, Tenants Victoria deals with a surge of people contacting our frontline service seeking help from lawyers to resolve their mould problems. Demand for support is so high that our service launched a dedicated Mould Clinic in 2021. It runs seasonally, over the winter months each year, supporting desperate renters who meet our eligibility criteria.

The insights in Tenants Victoria’s inaugural Mould Report, launched in Law Week 2023, are drawn from examining 103 complaints processed by the Mould Clinic from June to September 2022. During this period, our staff drafted on behalf of renters many ‘letters of demand’ to landlords to comply with rental laws and helped people progress their legal claims to the Victorian Civil and Administrative Tribunal (VCAT).

More than a third of the renters who consulted Tenants Victoria said mould had damaged their furniture and clothing. Almost two thirds were concerned about their health, and for some the health of their children. Nearly a fifth of the renters involved could not sleep in their rented homes because of the severity of the mould – one said they had spent \$2500 of their own funds on hotel rooms. Two people, meanwhile, had no choice other than to sleep in their cars.

Mould and the law

In 2021, the Residential Tenancies Act 1997 changed to give renters more rights to fight mould in their homes. Key reforms included:

- Mould must be disclosed to renters before they enter into a residential lease. For mould and damp, this includes telling a renter if the landlord has received a repair notice for mould or damp related to the building structure within the last 3 years.

- A mould-free rented home is now a mandatory 'minimum standard' for leases commencing after 29 March 2021. This means each room in a rented home must be free from mould and damp caused by, or related to, the building's structure.
- For leases commencing after 29 March 2021 rentals must also meet mandatory minimum standards for ventilation.
- In a big shift, mould repairs are now classified as 'urgent repairs' in Victoria. This status requires that a hearing at VCAT is held within 2 business days of a renter making an application to the tribunal.

How urgent?

In Victoria, mould is an 'urgent repair' and should be fixed by a landlord as soon as possible. But is this really happening? Strikingly, 32 landlords involved in complaints to the Mould Clinic in winter last year explicitly refused requests for repairs and a further 57 landlords prevaricated: that is, they delayed the mould repairs or did not respond to the renters' requests for repairs.

The stories shared by renters were hair-raising, and often reinforced age-old power imbalances between the renter and rental provider. The slow responses of real estate agents were also raised as a concern by many renters who consulted the Mould Clinic.

Breaking the mould: renters voices

Renters did not hold back in sharing their stories with Tenants Victoria.

'I inspected a property that was perfectly suited to me but noticed a roof leak with severe mould. Upon being offered the property I was told this was rectified and the mould was sorted. I moved in, and 4 weeks [later], the roof started leaking again and the mould started to reappear. It was then I realised this was only painted over and not fixed.

The more it rained the worse it became, and my floor was soaked, and the mould was starting to become severe. I was constantly ignored, and nothing was getting done to fix it when I reported it to my landlord. It started to affect my respiratory system and eventually (I) had mushrooms growing inside the home.'

After escalating to VCAT, the landlord finally agreed to release me from my lease (this took 7 months as he constantly denied my ask). The mould was green, yellow, and black and covered about 1.5 metres of my roof.

... Really heartbreaking for a tenant that always treated the home as if it was my own and always paid rent on time.'

'I have mould on the walls in my apartment. I've notified my estate agent. Their reply was that they would send a maintenance worker to paint over the mould. I haven't followed it up because I know that this won't solve the issue.

I know I'm entitled to an 'urgent repair', but since the mould is caused by inadequate ventilation, major work would have to be done to treat it, e.g., installing a fan or replacing the windows so that I can open them. I wouldn't have anywhere to stay while this work is being done and I wouldn't feel comfortable at home during the renovation.

... I feel completely powerless. The estate agent didn't disclose that there was mould before I moved in, so I didn't know about it.'

'For many years I have reported and requested drain repairs ... When the issue gets bad, and/or overflows, I have had a number of sudden outbreaks of a nasty black mould appear on floors, surfaces, even books and furniture; clothes have needed to be thrown out and treated with fungicide.'

'As the mould spread all around the property and ruined my personal items, I reported the problem to the property manager, but they ignored me. After 2 months, I went through Tenant Victoria and they followed my case up, so the landlord started acting on the problem and it took 1.5 months.'

'When we moved in there was black mould present in the bathroom, especially in the shower grout. We removed it with mould killer spray as well as the other bits of mould present on the walls and roof. However, as the months went on, black mould began to grow in other rooms as well as badly on the bathroom roof. Soon it was also quite bad in the sunroom.

Concerned about the health effects, we contacted the agent and were advised to clean it ourselves with mould killer spray (something that, with retrospective knowledge of tenants' rights and the health concerns I would not have done). My housemate and I, however, cleaned all the mould (and incidentally got quite sick from the combination of the bleach fumes in the poorly ventilated rooms and the mould spores).

I wish I had known more about how mould spread at the time, because I wouldn't have wasted energy on this futile and dangerous job. The mould came back again within a month.'

Shifting responsibility or avoiding it?

Researchers have found that rental properties are more likely to be mouldy than other homes. Writing for The Conversation, Professor Rebecca Bentley, Dr Nicola Willand and Dr Tim Law note there is also a gap between building and residential tenancies legislation.

Tenants Victoria's Mould Clinic has found that renters on the ground are often unsure about who is responsible for eradicating the mould in their homes. Renters often believe that it is their responsibility

to clean mould, and erroneous expectations are often set by landlords and real estate agents who advise renters that they should change their behaviour at home to minimise mould with remedies including opening windows during winter, or not drying clothes indoors. However, mould is also often caused by structural issues within residential buildings that are beyond a renter's control.

The upshot? Despite increased legal protections, Victorian renters are still struggling to get mould removed promptly from their homes, according to this snapshot. This is caused by a misunderstanding of the law by renters, landlords and real estate agents, and delays in the VCAT process that can be caused by requests for expert reports. These issues are only further exacerbated by general misunderstandings about the causes and impact of mould.

Three renters: how Tenants Victoria helped in winter 2022

The private renter

A student, in their 20s, had lived in a privately rented share house since 2019. They were the only person on the fixed-term lease, which was due to end in October 2022. The household residents had continually battled mould problems since they moved in. They said it had caused health problems for all the residents, ranging from a persistent dry cough for 2 years, a chest infection, sinus problems and multiple viruses.

The household eventually convinced the landlord to send a plumber to investigate. The tradesman determined there was a bad black-mould problem due to structural issues. The plumber found that water had pooled underneath the bedroom floor, leading to condensation and thus mould.

Despite this damning finding, the landlord did not take steps to address the structural causes of the mould. Instead, they insisted that 'a bit of mould is normal during winter'. In a small concession, they did book in a mould inspector to visit the property later.

Deeply frustrated, the renter served the landlord with a 'breach of duty' notice requesting a rent reduction and mutual termination of the lease. The landlord denied that they were in breach of the lease, arguing that by booking a mould inspector they were fulfilling their obligations under provisions for undertaking 'urgent repairs'.

By the time the renter approached the Mould Clinic for help, they were no longer sleeping at the premises due to the insidious black mould. Instead, they couch-surfed with friends. The other 2 residents also vacated the premises.

The entire household regarded the property as uninhabitable. But the renter on the lease faced a challenging financial dilemma, as they could not afford to pay the rent alone and there were still months ahead before the lease formally expired.

Outcome

Tenants Victoria examined photos of the mouldy home and advised the renter to serve the landlord with a second breach of duty notice, which would entitle them to terminate the tenancy with no financial penalties if the landlord did not fix the structural causes of the mould. Our lawyer also suggested that the renter attach a compensation claim.

The renter got back in touch 3 days later with news that the landlord had agreed to mutually terminate the lease with no financial penalty incurred.

The public housing renter

The renter, a woman in her 70s, who lives alone in a public housing flat. She is a person with disability who relies on a Centrelink pension.

In February 2021, the renter wrote to the landlord to report a mould issue in the bathroom where wallpaper had been peeling – she had already reported the issue a year prior. She further complained and asked for urgent repairs to be undertaken in early 2022, and once again in May 2022.

No action was taken until a representative of the landlord inspected the property in late May 2022. There was now a hole in a wall of the flat and a foul smell had emerged. The renter said she was sleeping on the couch to escape the smell and the makeshift sleeping arrangements were causing her physical pain.

By June 2022, the renter observed brown fluid dripping down into her home. She covered the hole in the wall and mould with plastic and wore a mask when using the bathroom due to the noxious smell. The renter also asked for a mould inspection. In late June, an inspector attended the property and advised that there was dangerous mould present. The inspector informed the renter that a toilet in an upstairs flat needed to be fixed as it was related to the mould. The renter said she was experiencing a persistent cough, chest pain and sinus issues during this time.

Outcome

In July 2022, a letter of demand was sent to the landlord seeking that the repairs be done within 7 days. With the intervention of the Mould Clinic, temporary accommodation was finally provided to the renter while outstanding repairs were undertaken. By the end of the month, repairs were finally done, and the renter was able to move back home.

The community housing renter

A retired couple rented from a not-for-profit community housing provider. They had been living in the home for 6 years and had recurring mould problems for half that time. Mould had first appeared in August 2019: the renters informed the landlord of the need for repairs that same month and dispatched a Consumer Affairs Victoria repairs notice. The notice was then ignored.

Over the next 3 years, the community housing provider sent inspectors to the property on several occasions to investigate the mould. However, no active repair work beyond inspections was done.

The lack of action on mould coincided with inaction on other repairs over the years. Meanwhile, mould spread throughout the house, rotting all windowsills, and becoming a particular problem in the bedroom.

Outcome

In August 2022, Tenants Victoria sent a letter of demand to the community housing provider requesting repairs be undertaken within 7 days. The following day, the landlord contacted the Mould Clinic confirming that they had arranged for the works to be conducted. Within a fortnight, repairs

commenced. The renter reported back that, for the first time, they felt that the landlord was taking the issue seriously and making efforts to fix it. The repairs were finished by late August 2022, alongside the other overdue repairs.

References

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