



Submission to the Property Market Review

1 April 2022

About Tenants Victoria

Tenants Victoria is the peak body for the state's renters, who number more than 2 million people. Our vision is for a safe, secure and affordable home for every Victorian renter 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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Executive summary and our recommendations

Thank you for the opportunity to respond to this important Review.

While a key objective of this Review is to ‘ensure buyers (purchasers) and sellers (vendors) receive a satisfactory level of service from real estate agents’, the starting point of our submission is that this can only be achieved by ensuring real estate agents demonstrate professional and ethical service across their whole range of functions, including both property sales and management.

As the specialist rental-law community legal centre, Tenants Victoria has long had an interest in the role, behaviour and regulation of estate agents. This is due to our extensive experience in providing advice to private renters with rental disputes against their real estate agents (as well as their rental providers), negotiating with real estate agents in relation to rental disputes, and opposing real estate agents in rental disputes before the Victorian Civil and Administrative Tribunal (VCAT) and the Magistrates’ Court of Victoria. We assist close to 10,000 renters a year in various capacities, which makes our office one of the largest legal advice and representation services for renters in the state. We draw on this work in informing our submission.

Non-compliant and unprofessional conduct by estate agents is a key concern of our service, and has been an issue that was particularly present since the onset of the COVID-19 pandemic, as set out below.

Recommendations

Our recommendations are as below:

Recommendation 1: The Victorian Government should introduce legislation requiring that mandatory continuing professional development be annually completed by all real estate agents and managers of owners corporations, and these should include, as a minimum, one ethics point a year.

Recommendation 2: The Victorian Government should fund high-quality, targeted and accessible training for real estate agents, rental providers, and manager of owners corporations on their obligations and responsibilities under the *Residential Tenancies Act 1997* (Vic). This education should be made available in different forms, including in-person training, and training tailored to particular rental provider groups, and include the following content:

- Legal obligations in relation to:
 - Basic duties and obligations under the RTA and other relevant legislation
 - Minimum standards, maintenance and repairs
 - Payment of compensation, when and where required
 - Family and personal violence, including modifications
 - The process of advertising for renters, and establishment of a new rental agreement
 - Rights of entry, and how to provide adequate notice
 - The process of ending a tenancy
- What is family violence, and how to support someone who is experiencing family violence
- How to work with people of non-English speaking background

- What is trauma, and how to work with someone who has experienced trauma.

Recommendation 3: Training courses for entry into the real estate agent sector, as well as ongoing professional development, should include content on:

- How to work with people experiencing financial hardship, and how to make a referral to appropriate support services
- What is family violence, the relevant provisions of the Residential Tenancies Act, and how to make a referral to appropriate support services
- How to work with people of non-English speaking background
- What is trauma, and how to work with someone who has experienced trauma.

Recommendation 4: Any enforceable undertakings given by estate agents should be published in a searchable register maintained by Consumer Affairs Victoria.

Recommendation 5: A property-market industry and consumer reference group should be established that includes estate agents, rental providers, renters, owners' corporation managers, and property sale and purchase consumer-representatives. The primary functions of such a group should include providing feedback to government on the operation of the real estate sector. The reference group should be able to receive feedback from the public on the sector. It should also report publicly, and regularly, on its activities.

Recommendation 6: The Estate Agents Council should establish an annual property-market survey that seeks feedback from a broad data set on the operation of the real estate sector. The outcomes of this survey should be reported publicly.

Recommendation 7: The Estate Agents Council should report publicly, and regularly, on its activities.

Recommendation 8: The Victorian Government should undertake a review of the impact of short-term rental platforms on the rental housing market.

1. Reform required to ensure good practice in real estate sector

In response to the questions posed in part 7 of the Consultation Paper, we note that our service experience over several years has been that there is great inconsistency between the standard of service provided by real estate agents in relation to the renters of the properties they manage. This ranges from reasonable and competent, to simply not knowing the law that applies to them, to actions which, on our instructions, are misleading.

Estate agent conduct in a time of COVID

Non-compliant and unprofessional conduct by estate agents is a key concern of our service and has been an issue that was particularly present since the onset of the COVID-19 pandemic. This has been extensively evidenced in our publications issued during the pandemic, as follows:

- [Portraits of a Pandemic \(August 2020\)](#) – This report details the key findings of a survey of 370 renters about their experiences in the first stages of the pandemic lockdowns. In relation to real estate agents, it was noted that:
 - Of the 18% who had not asked for a rent reduction, 12% said this was due to their real estate agents' conduct
 - Of those that did apply for a rent reduction, 34% stated their request for a reduction was either ignored, or no reason for a refusal was given (often by an estate agent)
 - At page 5, in relation to real estate agent conduct, it is stated that a 'strong sentiment that emerged in the survey was a frustration with conduct of real estate agents in interactions with renters who sought reductions. A lack of responsiveness to renter's queries and delays, excessive demands for personal information and suggestions on how renters can better manage their financial situations all emerged as themes.' A number of examples are quoted in the report.
- [Tenants Victoria submission on the Estate Agents \(Education\) Regulations 2020](#) – At Appendix 3, this submission set out 26 examples of real estate agent misconduct gathered in the early stages of the COVID-19 pandemic lockdowns.
- [Under pandemic pressure \(March 2021\)](#) – This report details the key findings of a survey of 76 renters after about one year of pandemic lockdowns. This was at a point of transition from the emergency measures rental law to the introduction of about 130 long-awaited amendments to the Residential Tenancies Act. At this point in time, estate agents again featured as a trend, with a number of respondents telling us 'that agents were often a barrier to rent reduction, stonewalling requests for rent reduction and providing misleading or even no information ... Just under half of respondents in this snapshot reported that their relationship with their agent or landlord had worsened during the pandemic.'¹
- [Pandemic pain \(August 2021\)](#) – In this snapshot survey of 684 renters, real estate agent and rental provider conduct again featured as a stress-point for renters. One troubling case study of professional misconduct by a real estate agency is described by a renter at page 10 as follows:

¹ [Under-Pandemic-Pressure-How-Renters-Are-Faring-Tenants-Vic-2021.pdf](#) (tenantsvic.org.au), page 5.

Our 2-person household wage dropped well below 50% during 2020 – almost made us homeless, with no support from the real estate agents or 1 of our 2 landlords, no rent reduction and no vital information passed on. Between June 2020 and June 2021, we have had the agents turn up unexpectedly at our home, asking us when we were handing the keys in as it was our vacate date. They had issued us with a ‘no reason vacate notice’ back in Feb 2020 wanting us out in June 2020. If they had done their job properly/professionally or at all, they would have known about the eviction moratorium. I informed them of our rights and the changes made by the government via email, but did not receive a reply, phone call, an apology or reason. However, I did receive over 150 emails and similar number of phone calls about rent arrears between April and Nov 2020. This was pretty much daily 5 days a week!!! In Nov 2020 they took us to VCAT, which obviously went in our favour, then they did it again in April 2021, again this went in our favour! From Feb ’20 until Aug ’21 (18 months) the real estate company has appointed 6 different agents (on average a different agent every 3 months) as our property managers, making communication almost impossible as we had no idea who to talk to and neither did their receptionist!

We note that we have not seen any change in the volume of complaints to our service by renters of real estate agent misconduct since the introduction of the entry requirements set out in the *Estate Agents (Education) Regulations 2020* (Vic) in October 2020.

Legal complexity requires more rigour in training

We do acknowledge, however, the challenge faced by real estate agents in having to learn and apply the new complexity of the Residential Tenancies Act since its substantial amendment in early 2020, and again on 29 March 2021. These latter amendments created new complexity in relation to, for example, new documentary evidence requirements for notices to vacate, new complexity regarding the reasonable and proportionate test for evictions, and numerous additional disclosure and conduct requirements for rental providers and their agents. This challenge is duly acknowledged in the Estate Agents’ Council Annual Report of 2020-21, which states:

A very significant issue now facing the industry concerns the education of agents around compliance regarding the amendments to the Residential Tenancies Act 1997 (Vic) and the effects that they are having both on estate agents but also residential rental providers. The Council shall continue to monitor this issue.²

As the case studies (a selection of real estate agent non-compliance complaints from renters over the last 6 months) in **Appendix A** demonstrate, we continue to regularly hear about, and oppose in VCAT proceedings, real estate agents who are not sufficiently familiar with the provisions of the Residential Tenancies Act to properly fulfill their function. This includes inconsistent knowledge of, among other things, the new family violence provisions, minimum standards, new requirements in relation to documents such as notices to vacate, and their responsibility to ensure they do not make misleading representations to renters.

It is therefore our submission that further and mandatory educational obligations will be required of real estate agents in order for them to more consistently fulfill their professional obligations, and in

² Estate Agents Council - Consumer Affairs Victoria, Annual Report 2020-21, page 7.

particular their obligation under section 6(b) of the [Estate Agents \(Professional Conduct\) Regulations 2018](#) to have a sufficient working knowledge of the law relevant to their function. This should be extended to managers of owners corporations, as they have an equal, although not legislated, obligation to know the law relevant to their function.

We note the Social Housing Regulation Review, which is currently ongoing, observed the following 2 problems in its Interim Report:

Although housing is an essential service, the private rental sectors do not work well for everyone in the community. Rental housing is mostly provided by small scale investors, who hold properties for a range of purposes including investment. Landlords' incentives do not always align with considerations of tenant wellbeing, particularly for those with additional and complex needs.

There are barriers to vulnerable and disadvantaged tenants in accessing the full range of consumer protections and rights under the Residential Tenancies Act 1997 (RTA).³

The Review Panel therefore made the following proposed recommendation:

18.3 Develop a Code of Practice for landlords and property managers based on best practice principles developed as part of [an education and guidance framework for private landlords recommended at 18.2]. Rather than a statement of legal obligations (which is contained in the RTA), the Code would be a positive statement of ethical conduct in the leasing of residential property beyond the legal requirements.

The objective of this voluntary Code of Conduct would be to provide a framework for ethical decision making and to provide practical guidance. The education material and Code should be co-designed with stakeholders including tenants.⁴

We strongly support the above recommendation, as it provides a stronger foundation from which rental providers and property managers, including estate agents, can carry out their responsibilities.

Recommendation 1: The Victorian Government should introduce legislation requiring that mandatory continuing professional development be annually completed by all real estate agents and managers of owners corporations, and these should include, as a minimum, one ethics point a year.

Recommendation 2: The Victorian Government should fund high-quality, targeted and accessible training for real estate agents, rental providers, and manager of owners corporations on their obligations and responsibilities under the *Residential Tenancies Act 1997*. This education should be made available in different forms, including in-person training, and training tailored to particular rental provider groups, and include the following content:

- Legal obligations in relation to:
 - Basic duties and obligations under the RTA and other relevant legislation

³ Social Housing Regulation Review | Engage Victoria, Interim Report, page 100.

⁴ Ibid, page 102.

- Minimum standards, maintenance and repairs
 - Payment of compensation, when and where required
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 - The process of advertising for renters, and establishment of a new rental agreement
 - Rights of entry, and how to provide adequate notice
 - The process of ending a tenancy
- What is family violence, and how to support someone who is experiencing family violence
 - How to work with people of non-English speaking background
 - What is trauma, and how to work with someone who has experienced trauma.
- Recommendation 3:** Training courses for entry into the real estate agent sector, as well as ongoing professional development, should include content on:
- How to work with people experiencing financial hardship, and how to make a referral to appropriate support services
 - What is family violence, the relevant provisions of the Residential Tenancies Act, and how to make a referral to appropriate support services
 - How to work with people of non-English speaking background
 - What is trauma, and how to work with someone who has experienced trauma.
- Recommendation 4:** Any enforceable undertakings given by estate agents should be published in a searchable register maintained by Consumer Affairs Victoria.

2. A more diversified advisory framework is needed to provide comprehensive advice to government on the real estate sector

We note the Estate Agents Council's primary functions and powers, as set out in section 6B of the *Estate Agents Act*, are to:

- Monitor the operation of the Act and its Regulations
- Assess the efficiency and effectiveness of regulation of the real estate industry under the Act and the need for further regulation or alternatives to regulation, such as deregulation or co-regulation
- Monitor developments in the real estate industry generally
- Advise the Minister for Consumer Affairs on any of the aforementioned matters, respond to issues referred to the Council by the Minister and make recommendations relating to the applications of grants of the Victorian Property Fund.

In light of this focus, we note that over the 2 years of the COVID-19 pandemic the Estate Agents Council has made no enquiry to our service about the experience of renters of the real estate sector during this challenging time for both estate agents and renters, nor queried how the sector's response could be improved in light of renters' experience. We note that we as the peak body for renters, and one of the largest rental law practices in Victoria, we are an expert source from which to derive information directly relevant to the Council's function. The Council's annual reports do not provide any information about any consultation done with renters (or real estate agents, or any other parties) that would help inform the advice the Council gives to government.

We therefore query the efficacy of the Council in garnering an appropriately representative suite of information with which to inform government of the operation of the Act and the real estate industry. This may be due to its resourcing, structure, or other matters. We therefore see real value in establishing a consumer reference group in relation to real estate-related issues that includes estate agents, rental providers, renters, owners corporation managers, and property sale and purchase consumer-representatives. This group could be adjacent to the Estate Agents Council and be focused on providing feedback on the sector to government. Regular, transparent reporting on the group's function would be preferable; for example, monthly public reporting similar to the Solar Victoria Industry and Consumer Representative Group⁵. This would then allow the Council to focus its work on, for example, making decisions on grants, larger strategic performance-monitoring projects, and other matters.

One strategic project that the Council could implement that would inform the broader public of the Council's existence and function, as well as provide a lucrative source of data for government on the sector's services and the operation of the Act, would be an annual property market survey. Such a survey should be sent out by SMS and email to all agents, their clients, and renters (via Residential Tenancies Bond Authority data). This could then inform further performance monitoring projects of the Council. The results of any such survey should be reported publicly, as well as to government. It would also be ideal if the Estate Agents Council implemented further measures of greater transparency, such as regular (i.e., per meeting) public reporting on its activities.

Recommendation 5: A property-market industry and consumer reference group should be established that includes estate agents, rental providers, renters, owners corporation managers, and property sale and purchase consumer representatives. The primary functions of such a group should include providing feedback to government on the operation of the real estate sector. The reference group should be able to receive feedback from the public on the sector. It should also report publicly, and regularly, on its activities.

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3. Other conditions influencing housing security and affordability

While there are many responses possible to the broad questions posed in part 9 of the Consultation Paper, we wish to raise, in particular, a key issue of concern for housing affordability that has not so far been explored in other forums – the regulation of short-term rental platforms such as Airbnb. Internationally, this has long been raised as an issue regarding the availability and affordability of, in

⁵ Industry and Consumer Reference Group | Solar Victoria

particular, long-term rentals⁶, with a number of jurisdictions both internationally⁷ and in Australia⁸ consequently introducing licensing or other regulations to control the impact of short-term rental on the long-term rental market. While the impact of short-term rentals was reduced during the COVID-19 pandemic⁹, internationally, it is unlikely this will continue. Therefore, we submit that the investigation of the impact of short-term rentals on the Victorian property market, and mitigation of any adverse impacts, would be of value.

Recommendation 8: The Victorian Government undertake a review of the impact of short-term rental platforms on the rental housing market.

⁶ The Airbnb Effect On Housing And Rent (forbes.com)

⁷ See, i.e. Vancouver approves regulations around short-term rentals including Airbnb | Vancouver Sun

⁸ Short-term and Airbnb accommodation: Legislation changes (rentcover.com.au)

⁹ A shift towards long-term rental homes, News, La Trobe University

Appendix A – case studies

No	Issue	Summary of case
1.	Waiver with invalid terms	The renter was verbally offered a rented premise they had applied for by the real estate agent. The agent informed the renter that the rental provider was going to demolish the property in 1-2 years and did not want to pay for any repairs. The agent asked the renter to sign a waiver which states that the renter would accept the premise as it stood, will not ask the rental provider for anything during the tenancy (especially repairs), and that if she paid for any repairs she would not be reimbursed.
2.	Family violence	The renter paid rent in advance and then had to flee the property due to family violence. She then requested, successfully, to have some of the rent in advance returned through the agent as she was no longer living at the property, although the family violence perpetrator continued living there. Shortly after this, the real estate agent requested the renter return the funds because the family violence perpetrator found out and wanted the payment returned.
3.	Lease/lease break	The renter received an email from the agent confirming she had been successful with her rental application. The agent requested payment of the first month's rent and the bond to secure the rental, and advised they would send the rental application later. The renter paid the amount, but never received or signed the agreement or other documentation. The renter then changed her mind in relation to the property 3 days after receipt of the agent's email, and advised the agent of same. However, the agent refused to refund the amount paid in relation to the rental, claiming lease breaking fees, and using threatening and aggressive language towards the renter, so much so that she was afraid to approach him.
4.	False advertising/ Tenancy Agreement	The renters responded to a rental listing with 2 parking spaces listed in the advertisement. When they went to the inspection the renter asked the agent where the second parking space was. The agent advised it was below in the secure car park but didn't provide them access to go down and view the car park. After the renters signed the agreement, they asked for the locations of the car park. The agent said that advertisement was a mistake – there is only one carpark. The renters have 2 cars.
5.	Sale of property/ Repairs	The renter had a fixed-term rental agreement ending on 18 April 2022. The real estate agent served the renter with a notice to vacate for the premises to be sold with a termination date of 4 April 2022. A notice to vacate for premises to be sold is of no effect if the termination date is earlier than the end of a fixed term rental agreement. The renter had a contemporaneous application for repairs which the agent asked her to withdraw due to the sale.
6.	False advertising	The renter signed a 2-year lease, on the basis that the rental was advertised as having air-conditioning. However, there wasn't one at the property – just a ducted

		heating system. The real estate agent said it wasn't in the lease anyway, and that the rental provider would only be willing to install AC if they increased the rent.
7.	Bond lodgement	When a renter contacted the Residential Tenancies Bonds Authority in relation to their bond lodgement, they were advised that the real estate agent had listed an email address of a related company to the agent as the email address for the renter on the bond lodgement. Renter was concerned that the agent did this intentionally to be able to release funds without the knowledge of the renter.
8.	Quiet enjoyment/ Overpaid rent	The renters were renovating their home, so they moved into a 9-month rental. As part of the agreement for the reduced term, they paid the full 9 months' rent upfront. After moving in, the rental provider put the property up for sale. The agent would consistently give them only a few hours' notice for inspections and did not arrange for the rental provider to pay compensation for the inspections, as per the new Residential Tenancies Act provisions.
9.	Notice to Vacate invalid	The renters were given a notice to vacate on the basis the rental provider wanted to sell the property, during the COVID lockdown. They started looking for a new property. The renter alleged that the agent harassed him and his partner by calling them, asking when they were moving out, threatening them with legal action, and saying 'I'll see you at VCAT'. After seeking advice, the renters discovered the notice was not valid as it was not accompanied by the requisite documentary evidence.
10.	Deductions from bond	The renter lived in an apartment building and accidentally allowed smoke to travel out of their door into the hallway, setting off the building's fire alarm. The Metropolitan Fire Brigade charged the owners corporation \$3,500 for the false alarm, which the owners corporation paid. Instead of making a formal compensation claim against the renter, the fee was passed on to the renter. The renter denied liability, but the real estate agent took rent payments and put them towards the debt without consent.
11.	Notice to vacate	The renter had signed a 12-month fixed term rental agreement. Eight weeks into the agreement, the rental provider wanted to demolish the house. The agent told the renter that if they did not agree to vacate, they would be served a notice to vacate with 60 days' notice, and that the rental agreement meant nothing. A notice given for demolition is of no effect if the termination date is earlier than the end of the rental agreement.
12.	Receipts for rent	The renter asked the agent for a record of the payment of rent. The agent reported that the renter had made 3 late payments in a 10-month period. The renter's bank statements contradicted the agent's allegation, but the agent refused to provide a more accurate ledger. The recipient of rent payments must keep a record of payments for up to 12 months and must provide a copy to the renter on request within 5 business days.
13.	Repairs	The rented premises had roof leaks, constituting an urgent repair which must be made immediately. The agent told the renter that they were on a waiting list and

		that they should not take any action without authority. While awaiting repairs, the leak resulted in further damage, including mould and damage to some of the renter's personal belongings.
14.	Quiet enjoyment	The agent only gave 3 days' notice of an inspection, rather than the required 7 days' written notice. The renter requested that the inspection be postponed for a few days due to work, but the agent came anyway and conducted an appraisal. The agent then advised the renter that the premises was to be sold, despite the renter recently having signed a fixed-term rental agreement. A notice to vacate given for premises to be sold is of no effect if the termination date is earlier than the end of the rental agreement.
15.	Misleading and deceptive conduct/ Lease transfer refusal	The renter signed a 6-month lease and had not moved in yet. Before signing the lease, the renter asked the real estate agent whether there was NBN – they stated that there was. The renter noticed there was no box so contacted an ISP who told him that it was not serviceable as the hardware needed was not installed at the premises. The renter then wrote to the agent explaining the situation and started a dispute under sections 30E and 452 of the Residential Tenancies Act alleging that the agent had engaged in misleading and deceptive conduct. The renter tried to arrange a lease transfer and asked the real estate agent if the rental provider would agree to transfer. The agent then sent a form. New tenants were found, but the real estate agent did not provide rental provider agreement to transfer, and did not give the reason for the refusal. The lease has a clause stating that they cannot unreasonably refuse consent to transfer.
16.	Harassment/ Incorrect rental ledger/ Rental payment	When the renter's tenancy began, the rent was due on a Monday, but the renter would not receive their Disability Support Pension payment until the Thursday. The renter attended the real estate agent's office to pay the first 3 days in cash. The renter began receiving text messages that their rent was late. The agent sent a rental ledger that was incomplete and when confronted by the renter, the agent admitted that they had not updated their database. The renter was also told that they are not permitted to pay rent via Centrepay.
17.	Goods left behind/ Ending tenancy	The renter passed away and was found by police after a courtesy call. The agent initially said that the family would have plenty of time to remove the renter's belongings, but then said that if they are not removed, they will be put in storage at the family's expense. The agent had not issued a notice to vacate to the renter's estate, so the estate retained exclusive possession of the premises.
18.	Minimum standards/ No electrical check.	The renter moved into new rental property. The property was dirty, the heater did not work, the fireplace had loose wires, there was no proof of an electrical check, and there was water damage, mould, and a sagging roof. The power also got shut off due to an electrical fault. The renter tried to contact the agent but heard nothing for days. The renter sent back the condition report via email. The agent agreed that the property should not have been leased in this condition and said they would find another place for the renter. The renter was frustrated that an uninhabitable property had been advertised for rent.

19.	Family violence/ Misrepresentation – belongings removed from property.	The renter is a family violence survivor who left the rental property she was residing in, while the family violence perpetrator remained at the property. The renter contacted the real estate agent and advised the agent that it was not safe for her to be living there. The renter wanted to go to VCAT to have her name removed. The real estate agent advised against doing this as it would take too long. The agent stated they would contact senior management. The family violence perpetrator wanted to continue with the lease. The agent said that the renter must pay a fee to have her name removed from the lease. The agent stated that the renter must wait for the perpetrator to pay his share of the bond before they would release the bond. The name would remain on the lease until the bond was refunded. The renter advised that the bond was hers as she paid the full bond (despite the perpetrator's name also being on the bond). The real estate agent said that because the perpetrator's name was also on the bond he was entitled to half. The renter also paid rent in advance. The agent then advised they would take the renter's name off the lease. The agent took the fee from the rent in advance but refused to return the rest of the rent in advance, stating the perpetrator must pay this to the renter. The agent told the renter that she needed to remove her belongings from the house because she had moved out. So the renter paid for the belongings to be removed by the council and taken to the tip. The renter, who was still paying rent, kept only what she could fit in her car.
20.	Urgent repairs/ Persuading person not to exercise rights or take proceedings	The renter was a PhD student and New Zealand citizen on a special visa with no income and no Centrelink payments. The renter made an urgent repairs application to VCAT, which found in the renter's favour. While the renter was searching for a co-renter to fill an empty room in the share house, he overheard the agent discussing the VCAT hearing with a potential co-tenant. The agent said that it was unfair of the renter to take the rental provider to VCAT, the renter was bossy and unreasonable, and the house environment was toxic.