

# CASE CATALOGUE – VICTORIAN TENANCY LAW CASES

*This resource provides general information only and is not legal advice. Anyone using this information must conduct their own due diligence to ensure they use it appropriately and within the scope of their role, noting that non-lawyers should not make complex legal arguments. This document summarises judicial decisions and may not capture all relevant nuances (for VCAT case summary only). You should seek professional legal advice for your specific circumstances. Renter advocates are encouraged to seek support through Tenants Victoria’s Community Worker Tenancy Service when applying any of these cases to client matters. Use of this information does not create a lawyer–client relationship.*

## 1 Context

This document summarises key Victorian tenancy law cases, heard by either the Victorian Civil and Administrative Appeals Tribunal (**VCAT**) or the Victorian Supreme Court, that tenancy advocates and lawyers need to know to advise and represent renters. These cases consider the interpretation and application of the *Residential Tenancies Act 1997* (Vic) (**RTA**) in relation to:

- (a) rent increases;
- (b) rent arrears; and
- (c) repairs and minimum standards.

## 2 RENT INCREASES

These cases provide helpful guidance as to the factors renters can rely upon to argue that a rent increase is invalid.

- (a) The rental provider must validly serve a notice in the prescribed form to increase the rent. This notice must expressly inform the renter of their rights to seek a report from Consumer Affairs Victoria.
- (b) From 29 March 2021, it has been necessary to include the rent increase calculation method in the notice. “Method” is the process or steps that have been taken to calculate the proposed rent increase. Simply stating the fixed dollar amount of rent increase is insufficient.
- (c) There is conflicting authority about whether the renter needs to be given sufficient information to enable the renter to determine whether the rent increase is excessive. Some cases suggest that the notice needs to do more than simply state that the rent increase is by reference to “comparable properties”. However, more recent authority suggests that it is not necessary to make reference to the location and features of comparable market properties, the actual properties considered or the evidence used to make the analysis.
- (d) The cases also suggest that renters should take steps to mitigate any loss from an invalid rent increase.
- (e) Finally, whether the rent increase is “excessive” is determined by reference to the factors in the RTA, including the condition of the premises and local comparable properties.

### 2.2 *Sied v Homes Victoria (Residential Tenancies) [2025] VCAT 862*

[\*Sied v Homes Victoria \(Residential Tenancies\) \[2025\] VCAT 862 \(30 September 2025\).\*](#)

Sections considered: ss 22, 44, 45, 46; Sch 1 Div 5 of the RTA.

**FACTS:** The applicants were renters under periodic rental agreements. The agreements were entered into before significant amendments to the RTA came into effect. The amendments included a requirement that the method by which the rent was calculated was included in a notice of proposed rent increase. A notice of proposed rent increase was issued to each of the renters. The applicants requested a rent increase report under s 45 of the RTA, which concluded that the proposed rent was excessive. The landlord adjusted the rent accordingly. An application was also lodged with VCAT under s 46 of the RTA requesting an order that declared the proposed rent excessive.

Subclause 16(1) of Division 5, Schedule 1 (transitional provisions) provided that s 44 of the *Residential Tenancies Amendment Act 2018* (Vic) (**RTAA**) did not apply to a fixed term tenancy agreement entered into before the commencement date of the applicable amendment and a periodic tenancy that commenced before the commencement of the applicable amendment.

**HELD:** The requirement in s 44(3)(b) to include rent increase calculation methods does not apply to periodic agreements that commenced before 29 March 2021, and hence do not apply to the rental agreements that were the subject of these proceedings. The notices of rent increase were valid. Not receiving a notice of proposed rent increase is a reasonable ground for failing to apply to Consumer Affairs Victoria (**CAV**) for an investigation and report within the prescribed 30-day time frame.

#### **Compliance with prescribed form**

Both pre and post 29 March 2021, s 44 required a notice of a proposed rent increase to be in Form 5 in Schedule 1 of the RTA. That form states that the notice must include the method by which the rent increase was calculated.

The test to be applied to determine the validity of the notice is whether a reasonable recipient, who is credited with knowledge of the terms of the lease, and taking into account the surrounding circumstances, would have doubts as to the meaning of the notice, or have regarded it as equivocal.

#### **Method of calculation requirements**

A method of calculating rent is more than a statement of outcome or a label that is used to describe or name a particular process. “Method” involves a series of steps for reaching a particular outcome. These steps that were taken to arrive at the proposed rent increase in each particular case should be set out. So long as the method used is coherently stated, and shows how the proposed rent has been determined, this will satisfy the section.

The Tribunal disagreed with a number of other VCAT decisions that stand for the proposition that more is required. Compliance with paragraph 44(3)(b) does not require that:

- (a) Enough information is included to enable the renter to determine whether the rent increase is excessive and should be challenged.
- (b) The notice makes reference to the location and features of comparable market properties sufficient to enable renters to make a proper assessment about the reasonableness of the increase.
- (c) The actual properties considered in a comparative market analysis be specified.
- (d) The evidence used to make such analysis be attached to the notice.

#### **Reasonable grounds for failure to request CAV rent assessment report**

The relevant inquiry under s 46(5) is whether the Tribunal can be satisfied that the renter had “reasonable grounds” for failing to ask CAV to investigate within 30 days after the notice of proposed rent increase is given. The test for reasonableness is the existence of facts which are sufficient to induce that state of mind in a reasonable person.

### 2.3 ***Barlow v Fedele 1175 Pn Rosebud Pty Ltd (Residential Tenancies) [2024] VCAT 64***

[Barlow v Fedele 1175 Pn Rosebud Pty Ltd \(Residential Tenancies\) \[2024\] VCAT 64 \(17 January 2024\).](#)

Sections considered: ss 3A, 44, 45, 46, 47, 506 of the RTA.

**FACTS:** The renter challenged a notice of proposed rent increase on the basis that it was excessive and not valid as it was not in compliance with s 44 of the RTA. The rental agreement commenced for an initial fixed term period of 12 months and then continued as periodic. The notice of proposed rent increase was sent to a different email to that provided in the original rental agreement. The renter applied to CAV, who provided a report to the renter, which provided that, while the proposed increase was not excessive in the current rental market, given the state of disrepair and breaches of minimum standards, the rent should not be increased. The renter made a section 46 application.

**HELD:** The notice of rent increase was invalid because it did not comply with s 44 of the RTA. The Tribunal accepted there is no precise formula or single test for determining the validity of a notice of rent increase. Whatever method is used to calculate the rent increase must include sufficient detail regarding the process for calculating the rent increase, including how any fixed dollar amount was arrived at, what considerations were taken into account, what the rental provider relied on to justify the rent increase and why the notice was given.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Service requirements**

The notice was served via email. The renter argued that the notice had not been validly served because they had not consented to the electronic communication in accordance with the *Electronic Transactions (Victoria) Act 2000 (Vic)*, as the written consent in the original agreement contained a different email address. The Tribunal was satisfied that the renter had expressly consented to email service by the rental provider for the duration of the rental agreement, either fixed or periodic. This was because the rental provider provided evidence of email exchanges with the renter using that email address, and the renter confirmed during oral evidence that they had consented to electronic service of notices.

The Tribunal found that the rental provider validly served the notice on the renter.

##### **Method requirements**

The wording of paragraph 44(3)(b) refers to the method used to calculate the new rent increase, not just the new rent amount. The words favour the view that the “method” is intended to be more than simply adding a proposed rent increase. The Tribunal found that the dictionary meaning of the words “method” and “calculate”, alongside general judicial approach that has been taken, supports the view that “method” required the process or steps that have been used to calculate the proposed rent increase. The Tribunal also found that the context in which paragraph 44(3)(b) appears in the legislation, having regard to the requirements set out in s 44(3)(a) and s 47 of the RTA, together with Forms 1, 2 and 5 in Schedule 1 of the *Residential Tenancy Regulations 2021 (Vic)*, support the view that more than just setting out a fixed dollar amount of rent increase is required.

### 2.4 ***Barratt v Liu (Residential Tenancies) [2024] VCAT 165***

Member W Boddison, [Barratt v Liu \(Residential Tenancies\) \[2024\] VCAT 165 \(23 February 2024\).](#)

Sections considered: ss 44 and 46 of the RTA.

**FACTS:** The rental agreement began as fixed term and then continued as periodic. The RTAA amendments came into effect during the tenancy, with the amendment that notices of rent increase required the method by which the rent increase was calculated. The question of whether the previous provisions relating to rent increases, which did not require the calculation, came into question. The notice did not specifically state the method by which the rent increase was calculated. The notice listed

other rental properties and the rate at which they were being rented, but the notice was not specific that it was comparing other rental properties as a means of calculating appropriate rent.

**HELD:** The new fixed rental agreement was entered into after the commencement of the amending act, so the amended provisions applied. The notice did not provide the relevant information to allow the renter to understand how the amount of rent increase was calculated or determined.

#### **Method requirements**

It was not clear whether the notice was comparing the rented premises to the other properties listed on the notice, and it was not stated that a fixed dollar amount method was being used to calculate the rent increase. The notice therefore did not meet the requirements in section 44(3)(b) and was invalid.

### **2.5 *Shafer v Bourke (Residential Tenancies) [2015] VCAT 874***

[Shafer v Bourke \(Residential Tenancies\) \[2015\] VCAT 874 \(11 June 2015\).](#)

Sections considered: definition of “tenancy agreement”, ss 27, 44, 52, 55, 58, 217 of the RTA.

**FACTS:** The parties had entered into three consecutive fixed term leases. For that period there was no signed agreement. There was a term of the lease that the renter would vacate at the end of the fixed term. At the end of the fixed term the renter stayed on the property. The rental provider sought compensation from the renter for an increase in rent that was never paid and for reimbursement of fire services levy and garbage collection charges.

**HELD:** There was no obligation on the renter to pay the amounts sought, as the purported rent increase notice was invalid and there was no obligation on the renter to pay for the charges.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Fixed term v periodic agreements**

Once a fixed term lease ends and the renter remains in occupation, then the tenancy is converted to a periodic tenancy agreement.

##### **Rent increase when entering into new fixed term lease**

At any time that the rental provider wished to increase the rent, they were required to serve a notice in the prescribed form to the renter, where the renter is advised of their rights. An email asking for a new lease to be signed with a rent increase was not in the prescribed form and was invalid.

##### **Indemnity requirements / tenant liability**

Section 58 requires the rental provider to reimburse a renter, if a renter is charged a fee in the first instance under a fixed term tenancy agreement of less than a year. It does not require a renter to reimburse a rental provider for rates and taxes if under a fixed term agreement of more than a year.

Section 52 does not impose any obligation on a tenant to pay for garbage collection services or a fire services levy. A claim for compensation only arises if the tenant is liable to pay for the services in the first instance.

Any charge not specifically referred to in the RTA or the regulations is not validly imposed. Any agreement for a renter to pay charges that are imposed on a property owner, such as a fire services levy or garbage collection fee, is an attempt to modify the provisions of the RTA and impose a more onerous obligation on a renter that is set out in the RTA. It is therefore an invalid term. A rental provider can still take these expenses into account when setting the rent.

### **2.6 *Maurer v Sia (Residential Tenancies) [2024] VCAT 571***

[Maurer v Sia \(Residential Tenancies\) \[2024\] VCAT 571 \(14 June 2024\).](#)

Sections considered: ss 44, 45, 46, 47, 48, 210, 211, 452, 472 of the RTA.

**FACTS:** The renter entered into occupation of the rented premises under a fixed term rental agreement. The renter sought a refund of more than \$15,000 in overpaid rent due to invalid notices of rent increase. Two proposed notices of rent increase were invalid.

**HELD:** The two rent increase notices were invalid, however the claim for compensation was dismissed due to a failure of the renter to mitigate their loss, there being consent to the amount of rent being charged and there being no appreciable loss to the renter.

**INTERESTING FINDINGS/COMMENTS:**

**Validity of rent increase notices**

A simple reference to a comparative rental market analysis with no further information as a justification for a rent increase does not give the renter sufficient information to make a proper assessment about the ‘reasonableness’ of the rent increase. This necessarily means that the notice fails to comply with s 44(3)(b) of the RTA and is invalid.

- (a) A notice must detail a method of calculation that provides sufficient information for a renter to know the basis on which the new rent has been determined and then to consider whether to challenge the notice as excessive.
- (b) A rent increase notice in the form of an emailed letter and absent a method by which the rent increase was calculated is not in the prescribed form and is invalid as it does not comply with s 44(1) of the RTA.
- (c) A rent increase notice in the prescribed form that states the method used to calculate the rent increase as a “fixed dollar based on market comparison” does not provide the details of the process and calculation used and is invalid for its failure to comply with s 44 of the RTA.

**Entitlement to compensation after paying invalid rent increase**

The award of compensation for a refund of rent falls to be assessed by reference to the steps taken by each party, any mitigation by the renter to reduce their loss and any concession by the renter that the rent being paid is not excessive and is a fair price to be paid for the rented premises. The overpayment of rent from an invalid rent increase does not automatically entitle a renter to a refund for the difference. Any claim for compensation falls to be determined on its own facts. Further, such an order is discretionary, taking into account relevant considerations and principles.

An award for compensation in relation to over-paid rent for the time period the invalid rent increase was in effect would be an unjust enrichment to the renter and unfairly disadvantage or punish the rental provider, in circumstances where:

- (a) the parties negotiated the rent with both parties making concessions;
- (b) the renter was provided with the security of a 12-month fixed lease;
- (c) the renter had obtained a benefit from the agreed price and the amount of rent paid reflected a reduction in the amount that could have been charged at the time; and
- (d) there was no challenge to the rent increase.

In those circumstances, the Tribunal was satisfied that the renter had obtained the benefit of living in the rented premises during that period of time, at a rent below market rate, and had therefore not suffered any loss for this period.

**Effect of past invalid rent increase notices**

If an initial rent increase notice is invalid, the new proposed rent is not applicable. Any further proposed rent increase notice must increase the amount from the last valid rent amount. Any significant error in the amount stated to be the amount of the rent increase means that there is a failure to comply with s 44 and would also render the notice of proposed rent increase invalid.

### **VCAT's power to declare notices of rent increase invalid**

There is no provision in the RTA for the Tribunal to make a declaration about the validity of a rent increase notice. The only means by which a renter might obtain such a declaration is if the payment of rent under a rent increase becomes the subject of a dispute.

## **2.7 *NSV v Zang (Residential Tenancies) [2024] VCAT 766***

[NSV v Zang \(Residential Tenancies\) \[2024\] VCAT 766 \(12 August 2024\).](#)

Sections considered: ss 44(3)(b), 44(5), 45, 46, 47, 48, 452, 472(1)(f) of the RTA.

**FACTS:** The renter's 2018 fixed term continued as periodic. A notice of proposed rent increase dated 7 February 2022 stated the "method" as "15.00 [sic] per week increase based on similar properties in area.". The rent was actually increased by \$65/month and then paid for 12 months. The renter contended the notice was invalid under s 44(3)(b) and sought compensation for overpaid rent.

**HELD:** The notice was invalid for failing to include the method by which the increase was calculated. Compensation of \$780 (12 months x \$65) was ordered under the Tribunal's general powers, having regard to the renter's reasonable conduct and the rental provider's lack of contrary evidence.

### **INTERESTING FINDINGS/COMMENTS:**

#### **Particulars**

A mere reference to "similar properties in area" without particulars of properties, locations, features, or dates fails s 44(3)(b), renders the notice invalid under s 44(5).

#### **Compensation is discretionary and fact-specific**

Here, the renter acted reasonably in paying under a mistaken belief of legal obligation, with mitigating personal circumstances and no rental provider evidence to the contrary.

## **2.8 *Bergess v Semenow (Residential Tenancies) [2020] VCAT 193***

[Bergess v Semenow \(Residential Tenancies\) \[2020\] VCAT 193 \(19 February 2020\).](#)

Sections considered: ss 44, 210, 211, 416 of the RTA.

**FACTS:** The tenancy commenced in 2011 at \$350/week. The rental provider increased rent twice (2015 to \$400/week by phone; and then in 2019 to \$425/week by text) without written notice or the prescribed form. The renters paid the higher amounts until vacating in September 2019. They sought the return of the bond and compensation for overpaid rent due to non-compliant increases.

**HELD:** Both rent increases were invalid for non-compliance with s 44. Bond refunded. Compensation awarded under s 210(1)(b) for overpaid rent, reduced to reflect mitigation principles, totalling \$1,800.

### **INTERESTING FINDINGS/COMMENTS:**

#### **Written Notice**

The rental provider failed to provide written notice in the prescribed form, give 60 days' notice, or inform renters of their rights to seek a CAV report. Both increases contravened s 44.

#### **Compensation not refunds**

While no jurisdiction existed to order refunds under s 48 absent an “excessive rent” application, compensation for overpayments was available under s 210(1)(b), with the s 211 factors (including mitigation) applicable.

*Pepper and Pope v White (Residential Tenancies)* [2018] VCAT 2026

[Pepper and Pope v White \(Residential Tenancies\) \[2018\] VCAT 2026 \(19 December 2018\).](#)

Sections considered: ss 45, 46, 47 of the RTA.

**FACTS:** The tenants occupied a unit since November 2014, with rent increasing from \$275 to \$285, and then to \$320 per week in October 2018 following a change in ownership. They sought a declaration that the current rent was excessive under s 46 after obtaining a CAV report that concluded the increase was excessive. The landlord relied on comparable rents in Broadford and surrounding areas to argue the rent was reasonable.

**HELD:** Application dismissed. The rent of \$320 per week was not more than that which should reasonably be paid having regard to the s 47(3) factors, the condition of the premises, and local comparable properties.

**INTERESTING FINDINGS/COMMENTS:**

**Weight given to CAV Report**

The Tribunal gave little weight to the CAV opinion, as it lacked robust analysis, including reliance on “comparable” properties in a different town and on an unnamed agent’s opinion. It preferred detailed local comparable properties showing rents between \$320 to \$340 per week for broadly similar properties.

**Material diminishing of rental value**

On condition and repair, issues raised by the tenants (small ensuite, prior leak and patch, garden weeds) did not materially diminish rental value to render \$320 unreasonable. The maintenance obligations are on the landlord, but tenants must keep the premises reasonably clean.

*Mrnjavac v Allswell Communities Pty Ltd (Residential Tenancies)* [2025] VCAT 726

[Mrnjavac v Allswell Communities Pty Ltd \(Residential Tenancies\) \[2025\] VCAT 726 \(4 September 2025\).](#)

Sections considered: ss 206W, 206X, 206Y of the RTA.

**FACTS:** Site tenants at a Part 4A residential park challenged a proposed increase from \$943.08 to \$1,040/month effective 1 January 2025, said to be based on a market review by a registered valuer (**CBRE**). CAV issued two reports (December 2024 and March 2025) finding the increase not excessive. Tenants argued that, having regard to s 206Y(3)(h), the Deferred Management Fee (**DMF**) and a Home Refurbishment Clause (**HRC**) in the site agreement should inform the “reasonableness” assessment. The respondent claimed that the application was made out of time.

**HELD:** Application within time (based on the second CAV report). Proposed rent not more than that which should reasonably be paid. Application dismissed.

**INTERESTING FINDINGS/COMMENTS:**

**Timeliness:**

Nothing in ss 206W to 206X prevents the Director of CAV from issuing a revised report or the tenant from applying within 30 days of the revised report. The application was therefore in time.

**Excessiveness**

Under s 206Y(3), the Tribunal considered the Director’s reports, CBRE market assessment, comparable parks’ site rents, park condition, recent rent movements, and the site agreement terms. The park’s proposed rent aligned with comparable ranges and with the site agreement’s review mechanism. In all the circumstances, including recent local rent movements and the amenities/condition of the park, the increase was not excessive.

### 3 RENT ARREARS

These cases provide helpful guidance as to the interpretation of key terms in the RTA.

- (a) “Unpaid rent” for the purposes of section 91ZM(1)(b) means:
  - (i) the fixed amount of arrears stated in the notice as at the date the notice is created, i.e., the arrears “owing as referred to in the notice to vacate”;
  - (ii) the rent due and unpaid as at the time of the renter’s payment – that is, the arrears that must be satisfied so that the arrears balance reduces to zero on or before the termination date
- (b) The relevant enquiry for an “occasion of non-payment of rent” for the purposes of section 91ZM(7) is:
  - (i) whether the renter owed at least 14 days’ rent at the time the notice was given (received or deemed received), not merely when it was prepared; and
  - (ii) construed as an instance where, at the time the notice is given, the renter “owes at least 14 days’ rent” within a relevant 12-month period of the residential rental agreement; and
  - (iii) must be owing at that time, not merely owed historically
- (c) “12 month period” for the purposes of section 91ZM(7) is interpreted as the count of the first to fifth occasions which resets on each anniversary of the agreement’s start date.
- (d) The test of whether it is reasonable and proportionate to make a possession order is considered by the Tribunal to be satisfied where:
  - (i) there are repeated and ongoing failure to pay rent, including after an agreed payment plan, and no explanation as to how the arrears would be paid;
  - (ii) there is no intention or means to adhere to a further payment plan, taking into account the history of non-compliance related to the payment of rent, the numerous excuses, manipulation of the truth, the failure to produce documents to support his claims, and the limited financial resources available to the renter;
  - (iii) there are no active efforts on the part of the renter to seek alternate work or cheaper accommodation, rent out any of the unoccupied rooms in the premises, not source any government or welfare assistance to pay any of the rent, and where any financial assistance she was given by family or friends was not spent on rent;
  - (iv) there was a long and significant history of arrears which had not been remedied as far as practicable and no evidence as to whether the renter had or would soon have capacity to make standard rental payments, let alone additional payments that might begin to remedy the substantial arrears; and
  - (v) there was an infrequency of payments in the 12 months prior to the hearing, non-payment of rent not being trivial, and no evidence to suggest the renter would soon have the capacity to pay the rent.

### 3.2 *Kaur v Lawton (Residential Tenancies) [2021] VCAT 1067*

[Kaur v Lawton \(Residential Tenancies\) \[2021\] VCAT 1067 \(14 September 2021\).](#)

Sections considered: s 91ZM of the RTA.

**FACTS:** The rental provider issued a notice to vacate under section 91ZM of the RTA on the basis of rent arrears. The notice asserted arrears of \$1,885.80 and set a termination date of 7 May 2021. The renter paid \$2,000 on 22 April 2021. The Tribunal was required to determine whether payment made before the termination date rendered the notice of no effect and, in doing so, to construe the meaning of “unpaid rent”.

**HELD:** The Tribunal held that the payment of \$2,000 satisfied the “unpaid rent” (i.e., the fixed arrears in the notice) before the termination date, thereby rendering the notice “of no effect” under section 91ZM(1)(b). Because the unpaid rent (as defined) was paid in time, the rental provider was not entitled to apply for possession under section 91ZM(1)(c), and the proceeding was struck out.

#### **INTERESTING FINDINGS/COMMENTS**

##### **Definition of “unpaid rent”:**

The Tribunal held that, for section 91ZM(1)(b), “unpaid rent” means the fixed amount of arrears stated in the notice as at the date the notice is created, i.e., the arrears “owing as referred to in the notice to vacate”.

The Tribunal expressly rejected broader readings that would capture rent owing up to the date the notice is given, the date of any later payment, the termination date, or future amounts payable under the agreement (such as rent payable in advance), because those approaches would require rolling calculations and could mislead parties as to whether payment was sufficient by the termination date.

### 3.3 *Ji v FFJ and DBB (Residential Tenancies) [2022] VCAT 853*

[Ji v FFJ and DBB \(Residential Tenancies\) \[2022\] VCAT 853 \(12 July 2022\).](#)

Sections considered: s 91ZM of the RTA

**FACTS:** The rental provider applied for a possession order under section 91ZM of the *Residential Tenancies Act 1997* (Vic) based on rent arrears. The notice was prepared on 6 January 2022 with the arrears at the time being \$1,234.29. Termination date was 28 January 2022. A payment of \$2,700 was made on 27 January 2022.

**HELD:** Even after the payment of \$2,700 on 27 January 2022, the arrears balance did not reduce to zero by the termination date, so the notice remained effective under the Tribunal’s interpretation of “unpaid rent”. As the notice was valid and effective, and considering section 331 and proportionality under sections 330 and 330A, the Tribunal declined a payment plan and made a possession order.

#### **INTERESTING FINDINGS/COMMENTS**

##### **Definition of “unpaid rent”:**

The Tribunal rejected equating “unpaid rent” with the amount owed when the notice is created, reasoning that an “occasion of non-payment” arises when the notice is given, and there is no legislative requirement to state an arrears figure in the notice. Section 91ZZO requires reasons, not a precise sum.

Construing “unpaid rent” as the amount owed when the notice is given would better align with the timing of the “occasion,” but can create uncertainty when notices are posted. Instead, the Tribunal adopted an interpretation anchored to the date of payment and the accrual rules in section 39 of the RTA.

Adopting section 39 (rent accrues day-to-day and is recoverable/refundable on that basis), the Tribunal held that “unpaid rent” refers to the rent due and unpaid as at the time of the renter’s payment – that is, the arrears that must be satisfied so that the arrears balance reduces to zero on or before the termination date. The Tribunal stated that clear words would be needed to depart from section 39. Parliament could have required the notice to specify the “unpaid rent” if it had intended a fixed-sum approach at the notice creation date.

**Definition of “occasion of non-payment of rent”:**

Section 91ZM(7) defines an “occasion of non-payment of rent” as an occasion where the renter owes at least 14 days’ rent within a 12 month period of the residential rental agreement, excluding any amount owing under a VCAT-ordered payment plan. The Tribunal emphasised that, for each such occasion, a separate notice must be given. The relevant enquiry is whether the renter owed at least 14 days’ rent at the time the notice was given (received or deemed received), not merely when it was prepared. On the facts, the notice was deemed given at a time when at least 14 days’ rent was owed, and it otherwise met the RTA’s requirements, so it was valid.

**Definition of “12 month period”:**

Section 91ZM(7) defines “12 month period” as:

- (a) the first 12 months beginning on the agreement start date;
- (b) the second 12 months beginning the day after the first 12 months ends; and
- (c) each subsequent consecutive 12 months immediately following the prior 12 months.

Practically, this means the count of the first to fifth occasions resets on each anniversary of the agreement’s start date. A prior occasion that became ineffective because arrears were paid still counts as an occasion for counting purposes.

**3.4 *Liu v Tang* [2022] VSC 243**

[Liu v Tang \[2022\] VSC 243 \(18 May 2022\).](#)

Sections considered: s 91ZM of the RTA.

**FACTS:** The Supreme Court of Victoria (Gorton J) heard an appeal from VCAT concerning a possession order made on the basis of a notice to vacate for non-payment of rent served on the renter, Mr Liu.

The rental provider’s notice to vacate was dated 8 July 2021, posted 9 July 2021, and asserted \$22,901 in arrears since 9 April 2020, with a termination date of 31 July 2021 and the usual “pay in full to avoid effect” provision. Before the Supreme Court, the rental provider accepted that, properly analysed, only \$7,407 was then payable as at the notice date (and \$10,551 by the VCAT hearing), meaning the notice had substantially overstated the amount then owing.

**HELD:** The Court held it is implicit in the legislation that a notice to vacate based on non-payment of rent must not materially overstate the rent actually owing at the time and a significant overstatement renders the notice invalid.

**INTERESTING FINDINGS/COMMENTS:**

**Effect of overstatement of rent arrears:**

The rationale:

- (a) VCAT’s jurisdiction to make a possession order is conditional on a valid notice, so an invalid notice means VCAT lacks jurisdiction; and
- (b) if overstatement were tolerated, a renter would be compelled to pay more than is owing to comply and avoid proceedings, which the Court considered impermissible.

The Court therefore found that notice here “substantially overstated the rent that was then owing” and therefore was not a valid notice to vacate.

### 3.5 *Patten v AKY (Residential Tenancies) [2022] VCAT 1031*

[Patten v AKY \(Residential Tenancies\) \[2022\] VCAT 1031 \(5 September 2022\).](#)

Sections considered: s 91ZM of the RTA

**FACTS:** The case concerned Patten (the rental provider) and AKY (the renter). A notice to vacate for rent arrears was issued on 24 November 2021 under section 91ZM of the RTA, followed by a possession application on 6 May 2022, with arrears standing at \$8,006.90 by the 12 August 2022 hearing.

**HELD:** The Tribunal held the notice was valid and found that the 30-day limit in section 326(1) does not apply to section 91ZM notices, and therefore the May 2022 application was valid. It was reasonable and proportionate to order possession, requiring AKY to vacate by 11 September 2022 and to pay the arrears, with warrant arrangements as specified.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Timeline for Possession Order Application:**

- (a) The Tribunal concluded that, for notices to vacate issued for rent arrears under section 91ZM, the rental provider is empowered by section 91ZM to apply for possession once the renter fails to pay by the termination date.
- (b) The Tribunal held that applying the “not later than 30 days after the termination date” limit set out in section 326(1) to s 91ZM notices would conflict with the text and structure of s 91ZM. Therefore, section 326(1) does not apply to such notices.
- (c) Because section 326(1) does not apply, the Tribunal found there is no specified legislative time limit for lodging a possession application based on a s 91ZM arrears notice. Accordingly, the 6 May 2022 application (which was filed more than 30 days after 17 December 2021) was valid.
- (d) On that basis, the rental provider was entitled to lodge the possession application on 6 May 2022, relying on the 24 November 2021 notice to vacate.

### 3.6 *Jackson v Field (Residential Tenancies) [2022] VCAT 859*

[Jackson v Field \(Residential Tenancies\) \[2022\] VCAT 859 \(28 July 2022\).](#)

Sections considered: s 91ZM of the RTA

**FACTS:** The rental providers sought possession against the renters under the “five-strikes” regime in section 91ZM, after issuing five notices to vacate between August and September 2021 for alleged non-payment of rent of \$350 per week. The renters made multiple interim payments after each notice.

A possession order was made in the renters’ absence. They promptly sought review, citing disability, reliance on an advocate, and an adjournment request that had been refused. The Tribunal granted the review and reheard the matter.

**HELD:** The Tribunal undertook a de novo assessment under section 91ZM, which required a separate notice for each separate “occasion of non-payment of rent”.

For each notice, the Tribunal held:

- (a) The first notice (5 August 2021) was invalid because, when deemed to be given, only 10 days’ rent was owed, so no “occasion” existed.

- (b) The second notice (16 August 2021, deemed to be given on 18 August) validly captured the first occasion (17 days' rent owed), but the renters paid the "unpaid rent" before the termination date, rendering that notice of no effect.
- (c) The third notice (30 August 2021) validly captured a second, separate occasion consisting of 14 days' unpaid rent from 18 to 31 August (counted from the date the second notice was given) but again, payment before the termination date rendered it of no effect.
- (d) The fourth notice (6 September 2021) was invalid because a new, separate occasion (14+ days of unpaid rent) had not accrued since the third notice was given.
- (e) The fifth notice (13 September 2021) in fact reflected only a third occasion (14 days from 1 to 14 September, i.e., since the third notice was given), and the renters paid the unpaid rent stated in the notice before the termination date, making that notice of no effect; therefore there was no entitlement to apply for possession on that notice.

On that basis, the Tribunal concluded that only three valid occasions had occurred by the time of the fifth notice, and each valid notice had been neutralised by timely payment. Accordingly, the application for possession was not maintainable. The Tribunal revoked the earlier possession order and struck out the possession application.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Meaning of "occasion of non-payment of rent":**

The Tribunal construed an "occasion of non-payment of rent" as an instance where, at the time the notice is given, the renter "owes at least 14 days' rent" within a relevant 12-month period of the residential rental agreement. The amount must be owing at that time (present tense "owes"), not merely owed historically. This construction rejects a broad interpretation based on missed periodic advance payments (e.g., missing two weekly payments) and anchors the trigger to the actual accrual of 14 days of arrears as at the time of giving the notice.

The Tribunal expressly rejected the rental providers' submission that two missed weekly payments (rent payable in advance) amounted to an "occasion" simply because that failure equates numerically to 14 days' rent.

Each notice to vacate must be supported by a new and separate "occasion", meaning a fresh period where at least 14 days' rent has accrued since the last valid notice. Arrears counted in an earlier (valid) notice cannot be re-used to manufacture the next occasion and there must be a genuinely new 14-day arrears period.

##### **Meaning of "12 month period":**

Section 91ZM(7) defines a "12 month period" as:

- (a) the first 12 months beginning on the agreement start date;
- (b) the second 12 months beginning the day after the first 12 months ends; and
- (c) each subsequent consecutive 12 months immediately following the prior 12 months.

In this case, the Tribunal assessed notices within the relevant rolling statutory 12-month segment starting 28 April 2021 (being the date marking the commencement of the pertinent 12-month period for analysis). The effect was that occasions must occur "within a 12-month period of the residential rental agreement" as defined above, and their validity depended on whether, at the time of each notice within that period, at least 14 days' rent was then owing.

### **3.7 *Lorita Nominees Pty Ltd v Chmielewski (Residential Tenancies) [2023] VCAT 1171 (18 October 2023)***

[Lorita Nominees Pty Ltd v Chmielewski \(Residential Tenancies\) \[2023\] VCAT 1171 \(18 October 2023\).](#)

Sections considered: ss 91ZM, 330A of the RTA

**FACTS:** This was the hearing of an application for possession filed by the rental provider pursuant to s 91ZM of the RTA on 2 October 2023. The matter had been before the Tribunal previously. On 1 March 2023, the Tribunal heard two applications for possession filed by the rental provider, one for the failure of the renter to pay a bond, and the other for rent arrears. The parties reached an agreement and the applications were struck out. The renter continued to fail making rental payments following the agreement made in March 2023. Rent owed to the date of the hearing was \$18,650.28. The renter did not attend the hearing. In the absence of the renter, the Tribunal was not in a position to create a payment plan without the renter’s consent or agreement. As such, the Tribunal considered whether it was reasonable and proportionate to make an order of possession or to dismiss the application.

**HELD:** The Tribunal ordered the renter to vacate the rental premises and pay the rent owed to the rental provider. The Tribunal also ordered that, on request and payment of the prescribed fee by the rental provider, the principal registrar of VCAT must issue a warrant of possession to be executed within 14 days after the date of issue.

**INTERESTING FINDINGS/COMMENTS:**

**Reasonable and proportionate test:**

The Tribunal considered the provisions of ss 330(1)(f) and 330A in determining whether it was reasonable to make a possession order.

With respect to subsection 330A(a), “*the nature, frequency and duration of the conduct of the renter...including whether the conduct is a recurring breach of obligations under a residential rental agreement*”, the Tribunal found that the renter had been in frequent breach of the obligation to pay rent. An agreement to make regular payments was made on 1 March 2023. A payment of \$670.35 was made on 1 March 2023. No subsequent payments were made. As such, the Tribunal found that agreement had failed, given the ongoing failure to make rental payments. The renter was also in breach of the obligation to pay a bond.

With respect to subsection 330A(b), “*whether the breach is trivial*”, the Tribunal found that a failure to pay rent is not a trivial breach of the RTA. The Tribunal stated that “*it is a fundamental aspect of the tenancy agreement that a residence is provided by the rental provider for some form of consideration by the renter*”. The amount of rental arrears was significant, and the failure to pay rent had resulted in a lack of funds available to maintain the property and to pay utility bills, rates and taxes on the property.

With respect to subsection 330A(f), “*whether the renter has, or will soon have, capacity to remedy the breach and comply with any obligations under the residential rental agreement*”, the Tribunal noted it had limited information regarding the renter’s financial position. However, the Tribunal noted that the renter had not demonstrated a capacity to pay the rent or arrears and highlighted the renter’s failure to pay rent, failure to pay a bond, and the failure of the previously agreed payment plan.

With respect to subsection 330A(j), “*any other matters*”, the renter raised concerns about the state and condition of the property and indicated an intention to lodge a compensation application arising from the state of the property. There was a longstanding dispute regarding mould in the property and the renter complained of adverse health effects. The Tribunal noted that this was relevant information to be taken into account, however, the claims were untested and no application for compensation was before the Tribunal at the time of this hearing.

In considering whether it was reasonable and proportionate to make a possession order, the Tribunal concluded that the repeated and ongoing failure to pay rent, including after an agreed payment plan, and accumulated arrears of \$18,650.28 with no explanation as to how the arrears would be paid, outweighed the issues that arose from the state of the property. Accordingly, the Tribunal found it

reasonable and proportionate to terminate the residential rental agreement and provide possession to the residential rental provider.

### 3.8 *Valenton v Shehata (Residential Tenancies) [2023] VCAT 11 (5 January 2023).*

[Valenton v Shehata \(Residential Tenancies\) \[2023\] VCAT 11 \(5 January 2023\).](#)

Sections considered: ss 91ZM, 330A, 331 RTA; s 120 *Victorian Civil and Administrative Tribunal Act 1998* (Vic)

**FACTS:** This was an application for review of a possession order made on 26 September 2022 requiring the renter to vacate the premises. On 14 February 2022, the rental provider sent the renter a notice to vacate for rent arrears under section 91ZM of the RTA. The renter failed to pay the unpaid rent before the termination date. On 9 March 2022, the rental provider made an application to the Tribunal for possession. The matter was listed for hearing on 29 June 2022 and a possession order was made in the renter’s absence (**First Possession Order**). A warrant was issued by the Tribunal on 30 June 2022.

The renter made an application for review of the First Possession order on 1 July 2022, under section 120 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**). The review was granted at a hearing on 22 July 2022 and the First Possession Order was suspended pending a further hearing. The warrant of possession was cancelled. On 10 August 2022, the Tribunal found that the rent of \$510 per fortnight was paid to 10 February 2022, with rent owing of \$6,593.57. A payment plan was ordered.

The proceeding was adjourned to a date after 31 August 2022. On the first return date, the proceeding was further adjourned and orders made for the matter to be relisted for hearing on 26 September 2022. At the time of the hearing on 26 September 2022, the renter had failed to make any payments in accordance with the payment plan. The Tribunal made a possession order (**Second Possession Order**) in the absence of the renter. On 27 September 2022, the rental provider applied for the issue of a warrant of possession. On the same day, the renter applied for leave to apply for a further review in the proceeding. Leave was granted to the renter to make a further review on 3 October 2022. Following several adjournment requests, the review was listed for hearing on 20 October 2022. The renter failed to attend and the review was dismissed.

The rental provider applied for a warrant of possession in accordance with the Second Possession Order, which was issued on 24 October 2022. On 28 October 2022, the renter applied for further leave to review the Second Possession Order. The Tribunal granted further leave in the absence of the rental provider, and placed a stay on the execution of the warrant. The warrant was extended by thirty days. The Tribunal found that the renter had given sworn evidence that he had paid rent in accordance with the rental agreement.

At the hearing of the review on 3 November 2022, the matter was adjourned to enable the renter’s lawyer to take “proper instructions”. The warrant was further stayed and extended. On 10 November 2022, the review and rehearing were listed at 3pm, the last sitting session of the day, due to the medical needs of the renter. An hour was insufficient for the hearing so it was adjourned to 15 November 2022. At the hearing on 15 November 2022, neither party complied fully with the directions made related to submitting documentary evidence to support their financial positions (however, the rental provider supplied some documents).

**HELD:** The application for review was dismissed and the Tribunal’s order of possession dated 26 September 2022 was affirmed. The stay on enforcement of the order of 26 September 2022 and execution of the warrant of possession issued on 24 October 2022 was revoked. The warrant of possession issued on 24 October 2022 was to be executed no later than 18 January 2023.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Payment plans:**

In determining whether it was appropriate to hear the renter’s application for review, the Tribunal was required to consider, under subsections 120(4)(a)(ii) and 120(4A)(a) of the VCAT Act, whether the renter had a reasonable case to argue.

The renter argued that he had a reasonable case to argue because he was willing to pay the rent, along with an extra \$80 per fortnight, and that the Tribunal should exercise its discretion and make a payment plan in accordance with section 331 of the RTA.

The Tribunal held that the renter did not have the intention or means to adhere to a further payment plan given the history of non-compliance related to the payment of rent, the numerous excuses and manipulation of the truth, the failure to produce documents to support his claims, and the limited financial resources available to the renter.

The Tribunal held that the renter did not have a reasonable case to argue for the following reasons:

- (a) The number of opportunities afforded to the renter to make payment of the rent and the arrears.
- (b) The continued failure by the renter to comply with the payment of rent or any Tribunal orders.
- (c) The renter’s own actions being responsible for him possibly being made homeless and the interest and impact on the rental provider.

The following circumstances were cited by the Tribunal in making its decision:

- (a) When the renter was challenged about why he should be given another opportunity to go on a payment plan when (a) he had only made one fortnightly payment of rent since the agreement commenced, (b) where despite a pending hearing for possession due to his non-compliance with paying the rent he had only made one payment and (c) where previous payment plan orders were not adhered to – the renter was unwilling to take responsibility for his actions and attempted to deflect blame.
- (b) The renter suggested that he was withholding rent to get repairs done, but then stated that he used the money to fix his car. Despite directions requiring evidence of the money spent on the vehicle repairs to support his claims, no documents were submitted.
- (c) The renter had no explanation as to why he lied under oath at the hearing on 28 October 2022, when he claimed he was complying with the obligation to pay rent.

### **3.9 *Ace Australia Pty Ltd as Trustee for Ace Trust v Peter (Residential Tenancies) [2021] VCAT 1157 (4 October 2021).***

[Ace Australia Pty Ltd as Trustee for Ace Trust v Peter \(Residential Tenancies\) \[2021\] VCAT 1157 \(4 October 2021\).](#)

Sections considered: ss 91ZM, 331, 330A, 352 of the **RTA**

**FACTS:** The renter owed thousands of dollars in unpaid rent and was facing an application for possession by the rental provider. The renter submitted that her circumstances were such that it was not reasonable and proportionate to make a possession order.

**HELD:** Possession order granted, with a delay on the issue of a warrant of possession of 14 days from the date of the possession order.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Payment plans:**

Pursuant to section 91ZM(1)(d)(i) of the RTA, the Tribunal considered whether the proceeding should be adjourned in accordance with an assessment under section 331 of the RTA. The Tribunal may adjourn

an application and place a renter on a payment plan if satisfied that satisfactory arrangements have been or can be made to avoid financial loss to the rental provider.

At the date of the hearing, the renter had not made any payments of rent since the notice to vacate (**NTV**) was given.

The renter submitted that the Tribunal should reduce the rent owed by an amount of \$7,300 that the renter claimed the rental provider could access under the 2020 land tax relief scheme. The Tribunal found that it had no ability to direct how this money was to be credited or that the renter, rather than the rental provider, should receive the benefit of this amount. The Tribunal rejected the renter's submission that this amount should be credited to the amount she owed for rent.

The renter was self-employed working in the hairdressing industry. Her income was severely impacted by the coronavirus pandemic and continued to be crippled by the lockdowns in Melbourne at the time of the hearing. No proposal was offered by the renter for the payment of ongoing rent or the payment of arrears.

The Tribunal found that satisfactory arrangements could not be made to avoid financial loss to the rental provider and as such it was not appropriate to adjourn the proceeding and place the renter on a payment plan.

**Reasonable and proportionate test:**

Under section 330A of the RTA, in determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following criteria:

- (a) the nature, frequency and duration of the renter's non-payment of rent;
- (b) whether the non-payment of rent is trivial;
- (c) whether the non-payment of rent has been remedied as far as possible;
- (d) whether the renter will soon have the capacity to pay the arrears and meet ongoing rental payments under the rental agreement;
- (e) whether any other order or course of action is reasonably available instead of making a possession order;
- (f) the behaviour of the rental provider; and
- (g) any other matter the Tribunal considers relevant.

The renter had not made any payment of rent to the rental provider since 17 September 2020. During the eleven-month period to the date of the hearing, she did not make application for a rent reduction under the Covid-19 Act, nor did she seek to avail herself of other coronavirus pandemic measures such as Jobkeeper or Jobseeker. She did not provide any satisfactory explanation for not taking these courses of action.

Despite being reliant on an industry severely impacted by the pandemic, the renter did not seek alternate work or cheaper accommodation, or rent out any of the unoccupied rooms in the premises. She did not source any government or welfare assistance to pay any of the rent. Any financial assistance she was given by family or friends was not spent on rent, but other living expenses, the particulars of which were not provided. The renter did not provide any bank accounts or any other documents that established her financial circumstances.

The premises were an asset of a trust. The beneficiaries of the trust had been personally meeting the mortgage repayments for the premises from their savings, additional loan arrangements and loans from friends. They said they could not continue to meet the expenses on the premises.

In the circumstances, the Tribunal found that it was reasonable and proportionate to make a possession order.

**3.10 Bellgrove Common Equity Rental Co-Operative v SJW (Residential Tenancies) [2024] VCAT 406 (3 May 2024)**

[Bellgrove Common Equity Rental Co-Operative v SJW \(Residential Tenancies\) \[2024\] VCAT 406 \(3 May 2024\).](#)

Sections considered: ss 91ZM, 330A of the RTA.

**FACTS:** A NTV was given to the renter under s 91ZM of the RTA on 14 May 2022. The renter did not pay all of the unpaid rent by the termination date. On 24 June 2022, the Tribunal made a payment plan order when arrears were around \$5,604 and the rent was \$202.20 per week.

The rental provider renewed the application for possession on 15 May 2023. Proceedings were adjourned to allow the renter to give instructions to her lawyer. The Tribunal made a second payment plan order on 19 July 2023 when arrears were around \$6,211. The renter submitted that she was expecting lump sum payments from Centrelink and the ATO that would allow her to substantially repay the arrears. The payment plan required the renter to pay \$7,000 by 18 August 2023.

By 6 December 2023, the lump sum payments from Centrelink and the ATO had not materialised. The Tribunal adjourned proceedings to allow the renter time to follow up. On 7 February 2024, the renter's advocate advised that the renter had held a mistaken belief that she was entitled to funds from the ATO and that Centrelink was unresponsive. The Tribunal indicated that it was not minded to delay its processes indefinitely or longer than the extensive adjournments already granted since 24 June 2022, in which time the arrears had grown from around \$5,604 to \$17,797 by 7 February 2024.

**HELD:** The renter did not follow the payment plan as ordered by the Tribunal. The rental provider was entitled to a possession order.

**INTERESTING FINDINGS/COMMENTS:**

**Reasonable and proportionate test:**

The Tribunal found that it was reasonable and proportionate to make a possession order, taking into account the interest and impact on the parties (section 330(1)(f)) and the factors laid out in section 330A of the RTA.

The Tribunal considered the following relevant factors in finding that it was reasonable and proportionate to make a possession order:

- (a) There was a long and significant history of arrears (which were not trivial in June 2022 when the first payment plan was made) and, at the time of the hearing on 7 February 2024, had grown significantly through a long history of further breaches (section 330A(a) and (b)).
- (b) The Tribunal accepted the renter's submissions that her ex-partner had accrued credit card debt in her name of \$45,000 and that she lost half of her savings as a result of a bank security breach, and that these factors contributed to her inability to pay rent (section 330A(c)).
- (c) The Tribunal accepted the renter's submissions relating to family violence, had to relocate to the rented premises with no savings or belongings, and if required to vacate could not live at her mother's place as her ex-partner was actively seeking her out and was aware of her mother's address (section 330A(d)).
- (d) The Tribunal found that the long history of accumulation of arrears had not been remedied as far as practicable (section 330A(e)).

- (e) Despite long adjournments, the renter did not produce evidence of capacity to make rent payments and the Tribunal was not satisfied that the renter had or would soon have capacity to make standard rental payments, let alone additional payments that might begin to remedy the substantial arrears (section 330A(f)).
- (f) The Tribunal made no adverse findings in relation to the conduct of the renter (section 330A(g)) or the rental provider (section 330A(i)).
- (g) Other relevant matters included the following (section 330A(j)):
  - (i) The renter facing homelessness and the loss of custody of her children meant the consequences of a possession order were severe.
  - (ii) The rental provider was a cooperative that provided accommodation on a non-profit basis. The renter's arrears meant that the cooperative was in a position of greater financial vulnerability with reduced resilience to financial shocks and unexpected events.
  - (iii) The renter had the benefit of a long, drawn out Tribunal process, and had had more than one and a half years to source funds and income to demonstrate the tenancy was sustainable.
  - (iv) Even accepting failures to pay rent were due to factors beyond the renter's control, the Tribunal could not delay its decision indefinitely. The Tribunal considered that more than one and a half years was sufficient time for the renter to have demonstrated she could regain control of the arrears.
  - (v) There was no prospect of the arrears being brought under control.

### 3.11 **JOW v NPS (Residential Tenancies) [2024] VCAT 37 (12 January 2024)**

[JOW v NPS \(Residential Tenancies\) \[2024\] VCAT 37 \(12 January 2024\)](#).

Sections considered: ss 91ZM, 213A, 322, 330, 330A, 331, 333, 351, 352 of the RTA.

**FACTS:** The renter moved into the premises on 11 May 2021 with four family members and her three children. After the 12-month fixed term period expired, the renter advised that the other renters would vacate the premises and the renter continued the rental agreement in her name only. The other renters' names were removed from the bond on 22 July 2022. The renter was estranged from those family members and the children were returned to the custody of her ex-partner. On 9 June 2023 the rental providers gave the renter a NTV for the premises by 24 June 2023. The NTV was validly given. On 26 June 2023, the rental providers applied to the Tribunal for possession, rent and the bond under sections 91ZM and 213A of the RTA. The renter did not make any payments towards the rent before the termination date in the NTV. The matter first came on for hearing on 13 July 2023. The matter was adjourned with information given about the matters to be taken into account in determining whether it was reasonable and proportionate to make a possession order. The matter was relisted on 17 August but was further adjourned because the renter's advocate was not given sufficient notice of the hearing. The matter was relisted for hearing on 23 October 2023. The decision of the Tribunal was reserved pending the filing of additional information. The Tribunal ordered:

*“On or before 25 October 2023, the renter is to send to the Tribunal (at [renting@courts.vic.gov.au](mailto:renting@courts.vic.gov.au)) information about whether she has or has not been successful in obtaining employment and evidence of any jobs that have been secured, when payment will commence, and how much can be paid on any regular payment towards the rent. The Tribunal also requires confirmation from the lawyers about the \$6000 superannuation early release payment including confirmation from the Superfund that the request has been received.”*

The renter subsequently provided a document from her employer which confirmed that she was employed as a cleaner for a minimum 25 hours per week, and would be paid \$675 weekly. The renter also sought more time to lodge the superannuation documents. The rental providers submitted that, as of 4 January 2024, the renter had paid no rent since the hearing on 13 July 2023.

**HELD:** Possession order granted.

**INTERESTING FINDINGS/COMMENTS:**

**Payment plans:**

Under section 91ZM(1)(d) of the RTA, upon application for a possession order, the Tribunal may place a renter on a payment plan and adjourn the application in accordance with section 331. As at the date of the reasons, the renter owed 304 days' rent totalling \$21,679.90. The renter acknowledged that she could not pay the rent on her own but was seeking to sublet the premises in order to pay off the arrears and to pay ongoing rental costs. The Tribunal found that the proposal by the renter to sublet rooms was not reasonable or practical. The renter did not explore this option until "*the eleventh hour of an impending hearing where possession was a genuine risk*". The request to sublet was also inconsistent with the renter's claims that she was seeking to have custody of her children returned to her. If custody was sought, the renter would require the rooms that she was proposing to sublet to accommodate her children.

Additionally, the renter had advised that she was going to receive a payout from a workers' compensation claim and had lodged a claim for an early release of \$6,000 in superannuation. The renter failed to file evidence that these payments would be made.

The Tribunal was not satisfied that any arrangement could be made that could avoid financial loss to the rental providers for the following reasons:

- (a) The renter failed to provide evidence of her capacity to pay off the arrears.
- (b) The renter did not make any payment at all towards rent, despite submitting evidence of a source of income and her partner being in receipt of the disability support pension.
- (c) The subletting of the rooms was not a reasonable or reliable alternative.
- (d) The renter had a history of non-payment of rent and broken promises.

**Reasonable and proportionate test:**

The Tribunal found that it was reasonable and proportionate to make a possession order. The Tribunal considered the following in making its decision:

- (a) The non-payment of rent since the matter first came on for hearing and the infrequency of payments in the 12 months prior is a matter that supported a possession order being made.
- (b) The non-payment of rent was not trivial. The payment of rent is a fundamental term of any rental agreement. The inability to comply with this fundamental term for an 18-month period, and the breach of not making any payments in the 6 months prior to the date of the reasons, were factors that support a possession order being made.
- (c) The renter elected to become the sole renter knowing she would need to continue paying the rent. No other person was responsible for paying the rent. It was noted that the renter's partner lived in the premises and also made no contribution toward the rent.
- (d) With limited information from the renter as to the status of any family violence orders and with the custody of her children having been returned to her ex-partner (who was not present when the intervention order was made), the Tribunal found it had insufficient evidence to be satisfied that family violence was a matter that supported the possession order not being made.

- (e) There was no payment of rent for a considerable period of time and only one payment made after the NTV was given. This supported a possession order being made.
- (f) There was no evidence to suggest the renter would soon have the capacity to pay the rent.
- (g) There were no other renters named on the rental agreement that were impacted by the renter not paying rent. However, the Tribunal found that this consideration was intended to extend beyond simply those renters named on the particular rental agreement. The Tribunal took into account the impact on the rental providers' daughter, who was seeking accommodation with friends. Due to the rental market, the daughter was having difficulty securing accommodation. The rental providers submitted that their daughter was assisting them with paying the mortgage for the premises due to the absence of income, and could instead pay this in rent for the rented premises, along with contributions from friends, providing an income to the rental providers. The Tribunal found that the need for the rental providers' daughter to supplement the mortgage payments due to the renter not paying rent, impacting on her securing a premises and limiting her options as a renter, were matters that weighed in favour of a possession order being made.
- (h) Despite opportunities to do so, the renter failed to pay the rent or provide substantial evidence in favour of a reasonable alternative option to resolve the issue. Her need to look for alternative accommodation is not a basis on which an adjournment or other order would be a reasonable alternative course of action. There was no other order or course of action that was a reasonable alternative.
- (i) The rental providers' failure to provide consent to the sublet of the rented premises was not a matter that supports a possession order not being made.
- (j) The renter submitted that a possession order would have a significant impact on her mental health, would cause a real risk of homelessness and cause financial hardship. The Tribunal did not consider that these submissions weighed against the granting of a possession order. The rental providers submitted that the failure to pay rent had had a significant impact on them financially and mentally. The Tribunal accepted this as a matter that weighed in favour of a possession order being made.

## 4 REPAIRS AND MINIMUM STANDARDS

These cases examine rental providers' obligation to keep rented premises in good repair.

- (a) Rental premises must meet minimum standards as set out in s 65A of the RTA. These minimum standards only apply to rental agreements that started on or after 29 March 2021, unless that agreement terminates.
- (b) The obligation in s 68 of the RTA imposes a strict and absolute duty on rental providers to ensure that premises are in good repair throughout the tenancy. This is a positive duty to investigate and remedy defects upon being put on notice of relevant defects.
- (c) The obligation to keep premises in 'good repair' entails a duty to keep the premises in good repair *in the first place*. The obligation cannot be diluted by features of the rental agreement, such as charging low rent. The practical effect of this is that rental providers cannot contract out of their obligations in the RTA.
- (d) Renters seeking damages for disappointment and distress must first establish that either the rental agreement or an obligation in the RTA was breached before proving causation between the breach and loss. An award of damages for disappointment and distress must not give rise to double recovery.
- (e) For a claim of substantial interference with quiet enjoyment of the premises to succeed, the renter must establish that the conduct of the rental provider "*renders the premises unfit from a reasonable point of view for the purpose for which the rental agreement was granted*".
- (f) Finally, a renter must take practical steps to mitigate their loss before seeking compensation.

### 4.2 *Niblett v Broadbent (Residential Tenancies) [2023] VCAT 1236 (6 November 2023)*

[Niblett v Broadbent \(Residential Tenancies\) \[2023\] VCAT 1236 \(6 November 2023\)](#).

Sections considered: s 65A, s 73 and the transitional provisions of the RTA

**FACTS:** The applicant had resided in the premises for approximately 12 years. He applied under s 73 of the RTA for an urgent repairs order requiring the installation of a fixed heater in the main living area. The applicant argued that this was required under the minimum standards in s 65A of the RTA.

**HELD:** The Tribunal found that the rental provider had not breached the minimum standards and struck out the application insofar as it sought urgent repair orders to install a fixed heater.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Application of s 65A and meaning of "termination"**

Section 65A of the RTA imposes a duty on a rental provider to ensure that premises comply with the prescribed minimum standards "on or before the day on which the renter enters into occupation". Therefore, a renter's remedy for non-compliance only arises on or immediately after the day that occupation begins. The minimum standards apply to rental agreements that started on or after 29 March 2021.

The Tribunal held that the transitional provisions (in Schedule 1, Division 5, cl 16(3) of the RTA) confirm that the minimum standards in s 65A do not apply to tenancies commenced before 29 March 2021 unless that agreement **terminates**.

The Tribunal did not consider that a fixed term residential rental agreement "terminates" at the end of a fixed term. This reasoning was grounded in the RTA making it clear that a residential rental agreement does not terminate and must not be terminated except in accordance with the RTA's termination

framework. Parliament did not use “end of fixed term” in cl 16(3) and instead chose “termination”, which must be understood consistently with the RTA’s termination framework.

Ultimately, the obligations under s 65A only apply before the renter enters into occupation and so cannot retrospectively apply to existing tenancies that commenced before 29 March 2021. The application was struck out because, absent an applicable minimum standard, the Tribunal has no power to otherwise order a rental provider to effect improvements to existing facilities.

#### **4.3 *Ball v Gavin (Residential Tenancies) [2016] VCAT 286 (3 February 2016)***

[Ball v Gavin \(Residential Tenancies\) \[2016\] VCAT 286 \(3 February 2016\).](#)

Sections considered: s 210 and s 211 of the RTA.

**FACTS:** The applicant renter applied to the Tribunal under s 210 of the RTA for compensation for inconvenience/loss of amenity arising from delays and failures to repair various fixtures and appliances. These included the evaporative cooling system, oven, stove top, hot water service, dishwasher, leaking pipe, light and power switches, blinds, side gate, and a shower head, as well as a claim for roof tiles purchased by the applicant after storm damage.

**HELD:** The Tribunal awarded \$1,085.72 compensation, set off against an amount she owed the respondent rental provider in the related proceeding, resulting in no net sum payable to her. The Tribunal applied s 211 of the RTA to substantially reduce many of the claims on mitigation grounds

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Failure to mitigate**

The Tribunal set out the statutory framework under s 211 of the RTA, which allows consideration of what action has been taken by the applicant to mitigate loss or damage. It emphasised that a renter is not entitled to damages for losses which, had they taken steps to mitigate, they would not have suffered. Therefore, recoverable inconvenience was limited to periods that would likely have occurred even had reasonable mitigation steps been taken.

Despite being aware of her rights in May 2014, the applicant failed to take practical mitigation steps until February/March 2015. These steps included:

- (a) arranging urgent repairs and seeking reimbursement under s 72;
- (b) seeking orders for urgent repairs under s 73;
- (c) for non-urgent repairs, requesting that CAV investigate the issue and make an application for the relevant orders, in accordance with ss 74 and 75 ; and
- (d) serving a breach of duty notice and pursuing compensation under ss 208 and 209.

Based on the Tribunal’s experience, it found that a tenant acting reasonably would have:

- (a) in urgent repair cases, realised within two weeks that the rental provider would not act and obtained orders within a further four weeks; and
- (b) in non-urgent cases, realised within four weeks and obtained orders within a further 12 weeks (inclusive of compliance time).

Therefore, recoverable inconvenience was capped at up to six weeks (urgent) and up to sixteen weeks (non-urgent).

#### **4.4 *Fw: Van Ristell v Director of Housing (Residential Tenancies) [2017] VCAT 480 (6 April 2017)***

[Fw: Van Ristell v Director of Housing \(Residential Tenancies\) \[2017\] VCAT 480 \(6 April 2017\).](#)

Sections considered: s 68, s 210 and s 211 of the RTA.

**FACTS:** The applicant applied to the Tribunal under s 210 of the RTA for compensation for damaged goods and removalist costs. The compensation claim arose due to the landlord breaching the duty to ensure the rented premises are maintained in good repair under s 68 of the RTA.

The applicant lived in a Director of Housing property in Coburg. In 2012, she reported cracking in the plaster and dust falling from the ceiling in a bedroom. The rental provider raised work orders to address roof leaks, replace or reset tiles, clear blocked downpipes, and to repair and replaster the ceiling. In July 2016, the lounge room ceiling collapsed, narrowly avoiding serious injury and damaging the applicant's belongings. The rental provider arranged immediate debris removal and short-term accommodation. The rental provider made no further repair attempts before the applicant vacated on 1 September 2016.

An engineering report obtained in October 2016 identified widespread structural movement, warped and wavy roof framing, drainage issues, and uneven flooring, and opined that ceiling collapse was consistent with structural movement and inadequate fixing techniques; it also observed that other cracks had been painted over and recommended extensive remedial works including removal and replacement of ceiling insulation throughout.

**HELD:** The Tribunal held that the Director of Housing breached s 68. The rental provider's response to the 2012 ceiling cracking and water ingress was grossly inadequate, as it merely replaced plaster and some tiles without proper investigation into underlying causes, roof cavity conditions, or other affected ceilings. The applicant established loss caused by that breach and was awarded \$1,845 compensation (plus the application fee).

#### **INTERESTING FINDINGS/COMMENTS:**

##### **Affirmative duty to repair**

The Tribunal held that s 68 imposes a strict and absolute duty to ensure premises are in good repair throughout the tenancy. This necessarily requires that they be in good repair at the outset and that the rental provider will identify and rectify defects of which it is or ought to be aware. The statutory word "ensure" is synonymous with "make sure", which creates an affirmative obligation to investigate and remedy defects (rather than a reactive or minimal repair approach).

Merely replastering and retiling in 2012, without completing a proper roof cavity inspection, structural assessment or broader investigative works, amounted to a failure to discharge the duty. The October 2016 engineering report confirmed systemic issues that should have been detected earlier. In fact, the prior superficial works may have masked the serious underlying problem.

Where a rental provider is on reasonable notice of issues impacting structural integrity, the scope of the s 68 duty entails comprehensive investigation and timely rectification across the premises.

#### **4.5 *Shields v Deliopoulos* [2016] VSC 500**

[Shields v Deliopoulos \[2016\] VSC 500 \(7 September 2016\).](#)

Sections considered: s 68 and s 452 of the RTA

**FACTS:** The applicant renter sought compensation of \$14,050.00 under s 452 of the RTA for the respondent rental provider's alleged breaches of s 68 of the RTA. The applicant alleged that the respondent breached s 68 of the RTA by failing to ensure that the rented premises were maintained in good repair both at the start of the tenancy and for the duration of her 5½ year tenancy. The repair issues included holes in walls and floors, water damage, mould, rats and other pests, electrical wiring, faults with doors and windows, fixtures and appliances not in working order, property unclean when moving in, shed collapse and problems with fencing.

The Tribunal found that the respondent fulfilled his obligation under the RTA and refused compensation to the applicant. The Tribunal found that s 68(1) of the RTA was a duty provision, which

at its lowest, required the rental provider to keep the premises in a safe state of repair to avoid injury to its occupants. It also found that this duty cannot impose an obligation on a rental provider to upgrade the standard of the premises during the course of the tenancy without a commensurate increase in rent. The applicant argued that the Tribunal misconstrued the duty to “ensure that the rented premises are maintained in good repair” by limiting the duty by reference to the property’s condition at the start of the tenancy, and that it took into account irrelevant matters when assessing breach of s 68.

**HELD:** The Tribunal misconstrued the rental provider’s obligations under s 68 of the RTA and took into account irrelevant considerations in determining that the rental provider had not breached his obligations to maintain the premises in good repair. It was held that s 68 of the RTA imposes a strict and absolute obligation on rental providers to identify and rectify any defects of which they are aware or ought to be aware. In this case, the question of whether the rental provider was put on notice of any defects did not arise, as the condition report prepared at the commencement of the tenancy detailed the repair issues at the premises. The Supreme Court found that the grounds of appeal were made out and remitted the proceeding to VCAT for determination by a differently constituted tribunal.

**INTERESTING FINDINGS/COMMENTS:**

**Meaning of “good repair”**

Section 68 of the RTA imposes a strict and absolute obligation on rental providers to identify and rectify any defects of which they are aware or ought to be aware.

- (a) The term “good repair” means “tenantable repair”, or “reasonably fit and suitable for occupation”. What amounts to “good repair” may be referable to the age and character of the relevant premises and it cannot be qualified by the state of repair at the commencement of the tenancy, regardless of the state of repair.
- (b) The obligation to maintain rental premises in “good repair” imports an obligation to keep the premises in “good repair” *in the first place*. This obligation cannot be diluted by charging a low rent to the renter. It is also no answer to a claim that a rental provider had breached their common law duty to maintain the premises in a safe condition to say that the premises had been unsafe at the commencement of the tenancy.
- (c) Furthermore, the question of whether the putting the premises in good repair amounts to an “upgrade” of the premises is not relevant to the question of whether the premises are being maintained in good repair.

**The RTA imposes limits on contractual freedom**

The RTA imposes limits of the freedom of contract, which means that no residential tenancy agreement can contract out of the rights and obligations arising from the RTA.

- (d) The RTA does not allow parties to residential tenancies agreements to “contract out” of their rights and obligations under the RTA.
- (e) It is clear from the framework and provisions in the RTA that the legislature intended to impose substantial limits to the principles of freedom of contract by the regulation of residential tenancies

**4.6 *Stransky v Dobrila (Residential Tenancies) [2018] VCAT 462***

[Stransky v Dobrila \(Residential Tenancies\) \[2018\] VCAT 462 \(28 March 2018\).](#)

Sections considered: s 68 of the RTA.

**FACTS:** The applicant made five separate claims for compensation totalling \$11,119.76 under s 68 of the RTA.

<b>Claim 1</b>	\$4,772.29 in compensation for the oven alleging that it was so dirty that she was unable to use it throughout her tenancy.
<b>Claim 2</b>	\$886.12 for defects in the blinds of two bedrooms which caused the blinds to flap in the breeze when the windows were open.
<b>Claim 3</b>	\$1,871.20 alleging that a security door in the building which led to a carport and to the rear of the property did not shut automatically as it was intended to, causing her to fear for her safety and security.
<b>Claim 4</b>	\$1,000.00 for the deterioration of the garden that was common property.
<b>Claim 5</b>	\$3,590.00 for misleading or unconscionable conduct under the Australian Consumer Law. The alleged conduct was the landlord's statement of intention to have a reliable long-term tenant rent the premises, and then re-letting the premises eleven months later.

**HELD:** The Tribunal dismissed all claims except for claim 2, awarding \$590.00 in compensation for the landlord's failure to ensure that the premises were in good condition pursuant to s 68(1) of the RTA by replacing the blinds. The reasons for dismissing the remaining claims were as follows.

<b>Claim 1</b>	The Tribunal did not accept the claim that she could not use the oven at all, as she did not allege any operational defect. The Tribunal held that the applicant ought to have mitigated any loss or damage by either cleaning the oven herself or by purchasing an alternative appliance earlier.
<b>Claim 3</b>	The Tribunal found that since the security door was not part of the rented premises, the rental provider had no duty under s 68(1) of the RTA to maintain it in good repair. However, a rental provider retains the duty under s 67 of the RTA to take all reasonable steps to ensure that the renter has quiet enjoyment of the rented premises. As the evidence demonstrated that it was the owners' corporation's responsibility to fix the security door and not the rental provider's, there was no breach of the duty in s 67 by the rental provider and therefore no claim could be established.
<b>Claim 4</b>	The Tribunal found that the condition of the garden did not affect the applicant's quiet enjoyment of the rented premises and therefore there was no breach of the rental provider's duty under s 67 of the RTA.
<b>Claim 5</b>	The applicant did not allege any loss arising from the supposed misleading or deceptive conduct. The Tribunal dismissed this claim on the basis that the alleged conduct was not misleading or deceptive, as the landlord was entitled to change her mind during the course of those eleven months. Similarly, the Tribunal found that this conduct did not meet the high bar of moral obloquy required for it to be unconscionable.

#### 4.7 *Anderson v Sharpe (Residential Tenancies) [2025] VCAT 415*

[Anderson v Sharpe \(Residential Tenancies\) \[2025\] VCAT 415](#) (12 May 2025).

Sections considered: ss 65, 65A, 67, 68A, 68B, 91P of the RTA.

**FACTS:** The applicant sought compensation of \$8,436.54 and \$12,495.00 from the rental provider in relation to the following alleged breaches:

- (a) failing to provide vacant possession of the garage between 26 July 2020 and 8 September 2023 in breach of s 65 RTA (claimed at 5% of rent - \$2,302.50);
- (b) failing to maintain the property in a reasonably fit state (mould, locks, heating and cooling) in breach of s 68 RTA (claimed at 8% of rent - \$1,383.80);
- (c) failing to comply with rental minimum standards (electrical safety, locks, mould and damp, window coverings) in breach of s 65A RTA (claimed at 10% of rent - \$2,875.26);
- (d) loss of quiet enjoyment of the property and attempt to illegally gain possession of the property following rent ledger dispute, in breach of ss 67 and 91P (claimed at 30% of rent - \$2,860.00);
- (e) failure to comply with safety related urgent repairs and maintenance (mould, electrical safety, leaking exhaust fan, doors and jutting concrete in driveway) in breach of s 68A RTA (claimed at 30% of rent - \$2,751.78);
- (f) failure to keep and produce records of gas and electrical safety checks in breach of s 68B RTA (claimed at 5% of rent - \$2,761.13);
- (g) failure to seal gaps in the kitchen cupboard to prevent rodents entering (no amount claimed);
- (h) damages for distress and disappointment in accordance with the principles in *Young v Chief Executive Officer (Housing)* [2023] HCA 31 in respect of each of the alleged breaches (\$12,102.71); and
- (i) compensation for loss suffered due to the applicant's inability to co-rent the property as a result of the alleged breaches (claimed at 50% of rent - \$7,905.00).

The rental provider cross-claimed for bond and compensation for rental arrears. The applicant did not dispute the calculation of the rental arrears but claimed that the unpaid rent was offset by her claims for compensation.

**HELD:** The applicant was only successful in relation to the claim that the rental provider failed to give vacant possession of the garage for a period of six months. The Court awarded \$429.00 in compensation for this breach, which was calculated at 5% of rent for 6 months. All of the remaining claims were generally unsuccessful for the following reasons:

- (a) the rental provider took all reasonable steps to comply with his duties under the RTA; or
- (b) the applicant had failed to establish that an alleged breach resulted in a loss to her.

The Court also found that the rental provider's cross claim for rental arrears was established in the sum of \$25,464.80.

#### **INTERESTING FINDINGS/COMMENTS:**

##### **From what point in time do the minimum rental standards apply?**

The minimum rental standards are not engaged when a fixed term converts to a periodic tenancy, regardless of whether that conversion occurred before or after 29 March 2021 (the date the minimum standards came into effect under s 65A of the RTA).

##### **Standard of quiet enjoyment**

The standard of substantial interference is:

*“conduct that renders the premises unfit from a reasonable point of view for the purpose for which the rental agreement was granted.”*

In cases of indirect interference, the level of conduct required to breach the threshold of quiet enjoyment is *“orchestrated and persistent harassment”* Automated emails and texts without any follow up or threats of enforcement do not rise to the standard of interference required to establish a breach of quiet enjoyment.

### **Damages for disappointment and distress**

A breach of the rental agreement and / or the RTA is required before an applicant can claim damages for disappointment and distress.

A claim for compensation for distress and disappointment is still a head of loss and damage for breach. Therefore, it engaged the factors the Tribunal may take into account under RTA s 211(a) and (b) in the same way under a claim for compensation for loss of amenity.

A sustainable claim for distress and disappointment would involve the following:

- (a) identification of an obligation under the RTA or rental agreement that, having regard to the purposes of the RTA and the justice and equity of the case, is of the kind that invites consideration of whether compensation for distress and disappointment is warranted;
- (b) the identified purpose will generally be one that aims to safeguard both the physical and psychological wellbeing of the party;
- (c) satisfaction that the distress and disappointment are the direct consequences of the breach, not merely a mental reaction to the breach and resultant damage;
- (d) there must be a causal connection between a breach of the rental agreement and compensable loss or damage, which may require consideration of issues of the kind that would be addressed in the assessment of damages at common law under the rubric of remoteness; and
- (e) the compensation awarded must not give rise to double recovery.