

STREET RIGHTS



NEWSLETTER OF THE PILCH HOMELESS PERSONS' LEGAL CLINIC

Edition 38 - Easter 2008

Evictions: what are your rights?

Behind in rent?

If you are unable to make a payment, contact your landlord or real estate agent as soon as possible and tell them when you will be paying. If you can't pay the arrears in one payment, you should offer to pay the arrears off over time (eg an extra \$20 per week). Don't offer to pay more than you can afford. Make the offer in writing and keep a copy. Even if the landlord or agent doesn't accept your offer, you can use your letter as evidence that you tried to resolve the problem.

Notice to vacate:

If you do not pay your rent on the day it is due, you will be 'in arrears'. If you are 14 days in arrears, your landlord can give you a 14-day Notice to Vacate. This notice must be hand delivered or sent to you by registered mail.

You can also be served a notice to vacate without reason, but you must be given 120 days to vacate.

The landlord must give you a Notice to Vacate **before** they apply to the Tribunal for a Possession Order. Otherwise

their application is invalid and should be dismissed.

VCAT Hearings

If you haven't already moved out, the Tribunal will schedule a hearing to take place after your Notice to Vacate has expired. You will be notified of the time and place of the Tribunal hearing and you should **always attend**. You may wish to dispute the landlord's reason for wanting to evict you, or explain your circumstances and ask the Tribunal for an extension of time. The Tribunal member can order that you be given more time, or if they are convinced that you should not be evicted, they can order that you be allowed to stay. If you do not attend the hearing, the Possession Order will almost always be granted.

Possession Orders

A landlord cannot evict you without first obtaining a Possession Order and a Warrant of Possession from VCAT. A Warrant of Possession directs the police to evict you from the property. Usually the police must act on a warrant within 14 days (although in special circumstances the Tribunal will

Please note this information does not apply to rooming houses.

sometimes allow 30 days.) Only the police can carry out the eviction; the landlord cannot personally evict you.

If the landlord has been granted a Possession Order by the Tribunal, you should contact your local police station to inform them that you will be leaving the premises on the 14th day. If you contact the police they will be less likely to exercise their power to evict you before then. Usually the police will give you a couple of days warning before they evict you, but be aware that they can lawfully act on the Warrant of Possession as soon as they get it (which can be the same day as the Tribunal hearing).

Seeking a review

If you find out that a Possession Order has been granted but you did not attend the hearing, you can apply to the Tribunal for a review hearing. You need to do this before the police evict you, as once you have been evicted the Tribunal has no power to allow you back into the property.

For useful information, go to the Tenants Union of Victoria website: www.tuv.org.au.

If you or someone you know is facing eviction, please contact the Clinic on 1800 606 313.

Green Paper on Homelessness

The Clinic Manager, Caro Adler, will be attending a 'Green Paper Roundtable on Homelessness' in Sydney on March 2008. The Roundtable will consider the ideas and views of service provider participants as to how Australia should address homelessness in the next 10 years. The discussion will inform the governments Green Paper. We would like to hear anything you have to say about these issues – give us a call on 1800 606 313 or email us at hplc@pilch.org.au if you have something to say.

HPLC Credit and Debt Reporting Project

Ignored debts? Refused credit applications?

The Homeless Persons' Legal Clinic is currently running a project looking at the existence of negative **credit and debt reports** for people who have experienced homelessness. If you have failed to pay a debt or been refused credit, it is likely you have a credit and debt report. If you would like a copy of your credit and debt report, and a lawyer to explain what it means and whether it can be challenged, give us a buzz on 1800 606 313.

Evictions on the rise?

By Rebecca Allen, Consumer Advisory Group Member

The Homeless Person's Legal Clinic is often contacted by people who are facing imminent eviction, or who have recently been evicted. This prompted me to ask whether there had been a recent rise in evictions, and what the cause of that rise may be. Were the evictions to allow re-letting at higher rents due to the rental shortage? How was VCAT handling applications for possession by landlords? Were provisions being made for people to catch up with their rent?

I spoke to a number of people who were willing to discuss their eviction process, as well as speaking to a registry staff at VCAT. From these discussions, the following picture has emerged.

It was reported that VCAT handle around 67,000 residential tenancy applications per year, 50% of which relate to possession warrants. Approximately 89% of possession warrants applications were issued due to rental arrears. VCAT says that most warrants were granted due to the respondents failing to appear. If the warrant application concerned rent increases, payment plans were put in place if landlords were agreeable.

After speaking with people who had dealt with evictions first hand, the limited anecdotal evidence available showed that the two main problem areas related to properties managed by the Office of Housing (OoH), and to rooming houses. Clients' stories suggest that there is improper behavior being exhibited by the property managers, including incomplete or inaccurate evidence being placed before VCAT. The HPLC will continue to monitor this situation and will make contact with VCAT to talk about their experience of residential tenancy issues and evictions.

If you have experienced these sorts of difficulties, give the HPLC a call on 1800 606 313.

Final Notice: Stories of Eviction

Office of Housing

Samantha and her daughter were evicted from her OoH residence in February 2008 on the basis of non payment of rent. Two days prior to the eviction she was behind in rent. However, she made a lump sum one day prior to the eviction. Samantha had not received any correspondence about her imminent eviction and only became aware of the order for possession and warrant to execute that order when she returned home to find that her locks had been changed. Her belongings were still in the house and she had nowhere to move her property to. She was also told that she would have to go back on the waiting list to get another property. Samantha was later informed of a VCAT hearing which was held in November 2007, and went ahead without her attendance.

Samantha said that, had she had more notice, she would have made efforts to pay the rental arrears. Samantha felt that she was denied due process, that OoH had not presented all the facts to VCAT, and that she had subsequently missed the chance to lodge an appeal. Undeterred, Samantha fought on – lobbying people within OoH for a return to her property. OoH eventually overturned their decision.

Rooming house woes

Bob came to the Clinic for urgent assistance with a VCAT hearing. His landlord was seeking to evict him as Bob owed \$500 rent for his rooming house room and had allegedly been threatening other tenants whilst holding a weapon. Bob, an elderly man, had recently been assaulted by one of the tenants and was being threatened by another. At the hearing, the VCAT Member gave both Bob and his landlord the opportunity to tell their stories. The VCAT Member took the time to listen to both sides and hear legal and non-legal arguments in relation to the debt and assault. This enabled Bob and the landlord to agree that Bob could stay at the rooming house rent free while he found somewhere else to stay and repaid his debt. Bob is looking at proceeding with a VCAT application for compensation in relation to the assault.

The CAG Chronicle Easter 2008

As reported in the last Chronicle, a letter was sent to the Hon. Tanya Plibersek MP, Minister for Housing and Womens' Affairs. The CAG expressed our interest in taking part in the federal government's consultation around the Green Paper, and other processes regarding people experiencing homelessness, or in danger of facing it.

Furthermore we stated we were looking into the feasibility of conducting a Consumer Forum to coincide with the Green Paper process around June. This forum will give those experiencing homelessness, those who have experienced it, or those in danger of experiencing homelessness, a voice and a direct means of contributing to the Green Paper.

We are looking into obtaining funding for the Consumer Forum, and such things as venue and format have yet to be finalised. However we are extremely excited about the forum. Hopefully this may lead to our involvement with the White Paper and any resulting changes in the future.

Dave Glazebrook and Lynne Cazaly through Leadership Victoria are providing CAG members with training in the art of public speaking.

With this expertise we hope to expand our current speaking engagements, and make us more effective as a group, and as consumer advocates.

We look forward to communicating more exciting achievements with you in the next edition of Street Rights.

Bec Allen, Consumer Advisory Group

HPLC good news stories

Centrelink: Separate teams of lawyers acted for Sally and Henry, who, after an anonymous tip-off, had been determined by the Centrelink fraud group to be in a 'marriage like relationship'. This determination resulted in Sally and Henry's payments being cancelled and substantial debts being raised. Neither was able to satisfy Centrelink that they were not in a 'marriage like relationship', so their applications for payments were rejected and Sally's children's Youth Allowance was discontinued. As a result, Sally's family received no income for several months apart from Family Tax Benefit, and depended on charities for food and other essentials. Clinic lawyers applied for review of Centrelink's decision late last year, and after considerable delay, the applications made it to an authorised review officer (**ARO**). After many thwarted attempts and a bit of luck, one team managed to speak to the ARO and explain the urgency of the matter. The ARO expedited his review, and reversed Centrelink's decision, after considering a very substantial volume of documents in two days. Once the decision is formalised, the link on the Centrelink system between Sally and Henry will be severed, and payments restored (with back payments) to Sally and her children.

* Names have been changed

Feedback Wanted

What do you think of our new look StreetRights?

Is there something you would like to contribute?

Please contact Helen Arblaster on 1800 606 313 or hplc@pilch.org.au to subscribe, or to have your say.

Email hplc@pilch.org.au to subscribe to our mailing list.

THE CLINIC PROVIDES FREE LEGAL ADVICE AT THESE LOCATIONS AND TIMES:

The Big Issue

148 Lonsdale Street
Melbourne 3000

Mon: 10:00am - 11:00am

Melbourne Citymission

214 Nicholson Street
Footscray 3011

Mon: 10:30am - 1:00pm

Footscray train station - Tram 82 (Droop St)

Ozanam House

179 Flemington Rd
North Melbourne 3051

Tues: 10:00am - 12:00pm

*Flemington Bridge train station
Trams 55, 59, 68 (Flemington Rd)*

Urban Seed (Credo Café)

174 Collins St, Melbourne 3000

(Approach via Baptist Pl, off Little Collins)

Tues: 12:00pm - 1:00pm

Flagstaff Crisis Accommodation

9 Roden St,
West Melbourne 3003

Tues: 1:00pm - 2:30pm

*North Melbourne train station - Tram 57
(Victoria St)*

Salvation Army Life Centre

69 Bourke Street
Melbourne 3000

Tues: 12:30pm - 2:00pm

The Lazarus Centre

203 Flinders Lane
Melbourne 3000

By appointment - call 9639 8510

St Peter's Eastern Hill

15 Gisborne Street
East Melbourne 3002

Wed: 7:30am - 9:00am

*Parliament train station - Trams 24, 42, 109
(Victoria Pde)*

Hanover Southbank

52 Haig St, Southbank 3205

Wed: 1:15pm - 3:00pm

Spencer Street train station - Tram 112

(Clarendon St)

HomeGround Housing

1A/68 Oxford Street
Collingwood 3066

Thurs: 12:00pm - 2:00pm

Collingwood train station - Tram 86 (Smith St)

VACRO

116 Hardware Street
Melbourne 3000

Thurs: 1.00 - 3.00pm

*Melbourne central station - Tram 19, 57 and 59
(Elizabeth St)*

Koonung Mental Health Clinic

Friday 1pm - 3pm

Level 1, 43 Carrington Rd
Box Hill 3128

Ph: (03) 9843 5800

PILCH

Level 1, 550 Lonsdale st.
Melbourne, VIC 3000

(03) 9225 6684 or 1800 606 313

www.pilch.org.au