

# New tenancy reforms strengthen the rights of domestic violence victims

BY KELLIE McDONALD



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**D**omestic violence is a leading cause of homelessness for women and children. Victims, also referred to as survivors, of domestic violence often need to flee their homes quickly in order to keep themselves and their children safe. However, if victims simply abandon their rental property, they can accrue a debt as a result of outstanding rent and damage to the property, and be black-listed on a residential tenancy database, making it very difficult for them to rent in the future. Victims may also be involved in several court proceedings in relation to criminal charges, parenting and property division.

## Background

Until recently, victims of domestic violence wanting to end their fixed term tenancy without liability needed to:

- give their landlord 14 days' notice and a copy of a final apprehended violence order ('AVO') which excluded the perpetrator from the rental property; or
- seek an order from the NSW Civil and Administrative Tribunal ('NCAT').

In our experience, it can take up to 12 months to get a final AVO with an exclusion order, particularly if the AVO is attached to criminal charges. Further, a court is unlikely to make an AVO excluding the perpetrator from the rental property if the victim intends to move out or if the exclusion will lead to the perpetrator being made homeless. Victims have often been reluctant to seek an order ending their own, or the perpetrator's, tenancy when advised that NCAT will require them to attempt to resolve their matter through conciliation with the perpetrator. Co-tenants are also jointly and severally liable for any damage done to the property, which meant that victims were liable to pay for damage done to a rental property by a perpetrator.

Women's Legal Service NSW ('WLS'), along with many other community organisations, has been advocating for a change to the *Residential Tenancies Act 2010* ('the Act'). WLS welcomes the recent reforms to the Act which came into effect

## Snapshot

- Victims of domestic violence can now end their tenancies immediately, without liability, by attaching specified documents to a domestic violence termination notice.
- Victims of domestic violence are no longer vicariously liable for damage to rental properties caused by domestic violence offenders.
- Landlords are now prohibited from listing a person who ended their tenancy by giving a domestic violence termination notice on a bad tenant database.

on 28 February 2019 and go a long way towards improving the rights of victims of domestic violence who are renting.

## Immediate termination in circumstances of domestic violence

The reforms enable victims of domestic violence to end their tenancy immediately without liability if they, or a dependent child, are in 'circumstances of domestic violence' (s 105B(2)).

If the victim, or their dependent child, is or was in a 'domestic relationship' with the perpetrator, as defined by the *Crimes (Domestic and Personal Violence)*

*Act 2007* ('CDPVA'), they can end their tenancy immediately by giving their landlord a 'domestic violence termination notice' and attaching one of the following forms of evidence:

- a certificate of conviction of the domestic violence offender; or
- a provisional, interim or final domestic violence order ('DVO') (a local, interstate DVO or foreign order within the meaning of Part 13B of the *CDPVA*) protecting them from the domestic violence offender; or
- a family law injunction granted on the basis of evidence of family violence; or
- a declaration by a 'competent person' (currently defined as a medical practitioner registered under the *Health Practitioner Regulation National Law* (NSW)) declaring that they, or their dependent child, are a victim of domestic violence (s 105C(2)).

The declaration must be in a form prescribed by Schedule 2A of the *Residential Tenancies Regulations 2010*. The declaration does not require details of the domestic violence to be disclosed, only that the medical practitioner has formed the view that the tenant, or their dependent child, is a victim of domestic violence. The contents of the declaration are not reviewable (s 105F).

It is an offence to disclose any of the documents referred to above, or information they contain, unless compelled by law (s 105C(3)).



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Tenants must give a copy of the domestic violence termination notice to any other co-tenants, but they do not need to attach the evidence referred to above (s 105B).

The domestic violence termination notice must include a date of termination that is on, or after, the date the notice is given (s 105C(1)).

A tenant can give their landlord and any other tenants a domestic violence termination notice by handing it to them, leaving it in their mailbox in an envelope addressed to them, posting or emailing it to them (s 223).

Any remaining tenants can apply to NCAT to end their tenancy (s 105E). For two weeks after a domestic violence termination notice is given, any remaining tenants, excluding the domestic violence offender, are only liable to pay rent divisible by the number of tenants that were living in the property immediately before the domestic violence termination notice was given (s 105D(3)-(4)).

### **Liability for damage**

Tenants are vicariously liable for damage caused to a rental property by another person and are jointly and severally liable for damage done by a co-tenant. However, the new reforms now mean victims of domestic violence are not liable for damage caused by a co-tenant or person during the commission of a domestic violence offence (s 54(1A)). These reforms give NCAT the power to assign liability for damage to a particular violent co-tenant or domestic violence offender.

### **Listing on tenant databases now prohibited**

Landlords, and their agents, are now prohibited from listing a person who ended their tenancy by giving a domestic violence termination notice on a bad tenant database (s 213A).

### **The reforms in practice: a sample case study**

'John' and 'Mary' live together in a rented apartment and both their names are on the lease. The police are called to a violent incident one night. During the incident John punches a hole in the bedroom wall. The police issue a provisional (on-the-spot)

DVO protecting Mary. Mary decides she needs to leave. She downloads a domestic violence termination notice from [www.tenants.org.au](http://www.tenants.org.au). She fills it out, prints and signs the notice and leaves a copy of it in the apartment's mailbox addressed to John. She then emails the domestic violence termination notice, with the provisional DVO attached, to their real estate agent's office.

Mary will not be liable for any break lease fee, or any further rent or damage done to the property after the date of termination on the domestic violence termination notice. Their real estate agent is not allowed to list Mary's personal information on a tenant database and she is not liable for the damage caused to the bedroom wall.

### **Statutory review**

WLS welcomes the option to rely upon a declaration by a medical practitioner because, in our experience, victims, who are primarily women, are reluctant to report violence to the police because they are ashamed or afraid the violence will escalate and/or are not able to access the family courts.

However, WLS believes that a 'competent person' should include a broader range of professionals who have sufficient experience to form an opinion as to whether a person has been a victim of a domestic violence offence, for example, social workers, counsellors, domestic violence or sexual assault specialist workers, health workers, community access workers, disability advocates, homelessness, housing or tenancy workers.

A broader range of professionals would improve access to these reforms for the most vulnerable people in our community who may be reluctant to disclose domestic violence to their doctor. For example, people with a disability often attend doctor's appointments with their carers, and if their carer is the perpetrator, they may not have the opportunity to disclose the violence.

The reforms require that the domestic violence amendments to the Act, be reviewed in three years' time. WLS will be monitoring the implementation of the reforms, and looks forward to working with the NSW Government to review the reforms. **LSJ**