

Introduction

The Victorian Civil and Administrative Tribunal (VCAT) is a mechanism for dispute resolution in Victoria. VCAT's jurisdiction extends to many areas, with the Residential Tenancies List as the relevant place for renting disputes. Renters and residential rental providers can make applications to have certain matters heard by a Member at VCAT, who will then make a decision that binds both parties. The subjects of disputes are broad and include issues such as rental arrears, maintenance issues, renters causing nuisance to neighbours and more. The Residential Tenancies Act 1997 (RTA) is the legislation that governs residential rental agreements. The RTA sets out many of the laws for renters and residential rental providers. VCAT is the mechanism to enforce these rules.

What is a Witness?

Witnesses can form a key part of a VCAT hearing. In situations where there are allegations against the renter that require evidence, witnesses can attend the hearing to provide oral evidence. This may include situations where the renter is causing a nuisance or interfering with the neighbours' peace. Evidence must be provided at VCAT hearings by the applicant. If there is no evidence and no witness attending, it is unlikely that the Member will grant an order to the applicant. Further to this, being a witness gives you the chance to tell your side of the story in a fair and equitable setting.

Preparing your Evidence

There are two ways to give evidence. You can submit an affidavit in the form of a written statement outlining your observations, or you can attend the hearing to give oral evidence. Members will allocate more weight to witnesses who provide oral evidence, as they can be asked follow-up questions and clarify certain points. It is always preferable to attend, and affidavits should only be used when it is physically impossible for a witness to attend the hearing or obtain an adjournment.

When giving oral evidence, it is still useful to provide some written documents to submit. This ensures anything you forget to say is still submitted to the Tribunal for consideration. This could be an impact statement, a timeline of events, photographs, etc. The Tenancy Officer can provide some guidance based on the unique situation of the hearing. All documents must be provided to the Tenancy Officer at least 2 days prior to the hearing. The documents will be submitted to VCAT and to the respondent.

Dialing In

All VCAT hearings are currently run via teleconference, much like a regular phone call. If you are attending a VCAT hearing as a witness for WHL, a Tenancy Officer will contact you to pass on the Notice of Hearing. This will contain a conference phone number and a unique conference code. At the time of the hearing, you will dial the phone number and when prompted, enter the code to access the hearing. You will be brought into a virtual waiting room by the Member who will verify who is present at the hearing and move the group to the virtual hearing room.

The Hearing

VCAT hearings are designed for all people, regardless of any legal background. This means the Member will use plain language and signpost the steps of the hearing clearly. Each hearing is unique based on the individual Member. Mostly, the Member will ask the applicant to speak first and outline what resolution they seek and the grounds on which they are relying. You will be asked to repeat a religious oath or a non-religion affirmation which pledges that you will be honest. The Member may ask the applicant / respondent to question their witnesses or may ask the witnesses questions directly.

If seeking a Possession Order, the applicant must prove that the alleged contravention of the RTA occurred, and that it is reasonable and proportionate to seek a Possession Order on this basis. The witness' evidence will help substantiate the claim and offer further context and background information. This will provide the Member with enough information to make a decision at the end of the hearing. As a witness, you may be present for the entire hearing, or just a portion of it. This depends on the Member's preferences and the length of the hearing. At the termination of the hearing, the Tenancy Officer will contact you to inform you of the outcome.

Giving Evidence

When giving evidence, it is important to describe the situation honestly and entirely. The Tenancy Officer can suggest questions that are likely to arise during the hearing so that you can prepare adequately. When describing the conduct of the renter, it is important to remain objective and factual. Try to be specific with dates and times that the conduct occurred. Therefore, it is beneficial to create a written timeline of events to refer to. When speaking of how the conduct has affected you personally, you can provide more subjective information. It is helpful to tell the Member how the behaviour has affected your life and your ability to live peacefully in your home. It is up to you how much personal information you wish to divulge but remember that the respondent will be on the call and can listen and respond to you. Decisions made by VCAT Members cannot be appealed on their merits, so it is important to ensure you have said everything you wish to.

If you have any further questions about the VCAT process, contact Laura Tucker (Policy and Project Officer) at laurat@womenshousing.com.au