Australasian Legal Information Institute

Victorian Civil and Administrative Tribunal

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

Last Updated: 19 January 2024

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST VCAT REFERENCE NO. R2023/19343

CATCHWORDS

Application for possession and bond – renter failing to pay any rent for over six months – it is reasonable and proportionate to make a possession order taking into account the interest and impact on the parties and the repeated promises of the renter – no delay on the possession order or on the issue of the warrant of possession.
Sections 91ZM, 213A, 322, 330, 330A, 331, 333, 351 and 352 of the *Residential Tenancies Act 1997* (Vic).

FIRST APPLICANT	JOW
SECOND APPLICANT	UNI
RESPONDENT	NPS
WHERE HELD	Melbourne
BEFORE	K Campana, Acting Senior Member
HEARING TYPE	Final Hearing
DATE OF HEARING	23 October 2023
DATE OF SUBMISSIONS	25 October 2023
DATE OF ORDER	12 January 2024
CITATION	JOW v NPS (Residential Tenancies) [2024] VCAT 37

ORDER

In accordance with section 166 of the *Family Violence Protection Act 2008* (Vic) the principal registrar is directed to make the following amendment to the register to anonymise the name of the parties:

The First Applicant is to be known as JOW,

The Second Applicant is to be known as UNI, and

The Respondent is to be known as NPS.

For the written reasons provided, the Tribunal orders that:

1. The renter must vacate the rented premises by 12 January 2024.

2. On termination of the residential rental agreement, the Residential Tenancies Bond Authority will pay the residential rental provider $2,173 in respect of the rent owing to the date of the application.
3. The renter must now pay the residential rental provider the balance of the rent owed of $19,506.90.
4. At the request of the person who obtained the possession order and on payment of the prescribed fee, the principal registrar of VCAT must issue a warrant of possession to be executed within 14 days after the date of issue. This request may be made after 12 January 2024 and no later than 12 July 2024.

Warning to renter: If you fail to vacate the rented premises by 12 January 2024, the residential rental provider can request the principal registrar to issue a warrant of possession. You may then be forcibly vacated from the rented premises by a police officer or an authorised person carrying out a warrant of possession.

K Campana

Acting Senior Member

APPEARANCES:

For Applicants	Hermant Verma, Regal Lawyers Mona Kaur, Goldbank Property Group
For Respondent	Lauren Ramsay, Justice Connect

REASONS

1. JOW and UNI ('the Rental Providers') have an investment property in Melbourne's south east ('the rented premises') that they seek to have returned to them, with NPS ('the Renter') failing to pay rent in accordance with the rental agreement.[1]
2. This is an application for possession, bond and compensation for outstanding rent under sections 91ZM and 213A of the *Residential Tenancies Act 1997* (Vic) ('the *RT Act*').
3. Taking into account the interest and impact on the Rental Providers of not having any income for more than six months, despite repeated broken promises by the Renter to make payment, and the

unlikely prospect of the Renter complying with her obligations under the rental agreement moving forward, it is reasonable and proportionate to make a possession order.

4. I have also determined given the passage of time since the hearing and the lack of any payment by the Renter, that there should be no delay of the possession order date, or the issue of the warrant of possession.

Background of Rental Agreement

5. The Renter moved into the rented premises on 11 May 2021 with four family members and her three children. The rent payable for the premises was $2,173 per calendar month and a bond was paid in that amount.

6. After the 12-month fixed term period expired, the Renter advised that the other renters were going to vacate and she sought to continue the rental agreement in her name only. The other renters' names were ultimately removed from the bond on 22 July 2022. The Renter says she is estranged from these family members and the children have returned to the custody of her ex-partner.

7. On 31 May 2022, the Rental Providers gave the Renter a notice of rent increase. The rent was to increase from $500 to $540 per week, commencing on 7 August 2022. The agent for the Rental Providers has charged rent at $2,346 per calendar month, slightly less than the $540 per week.[2]

Renter given a Notice to Vacate

8. On 9 June 2023 the Rental Providers gave the renter a notice to vacate the rented premises by 24 June 2023 ('the NTV'). The NTV was sent by email to the Renter's email address provided for and consented to in the rental agreement.

9. At the time the NTV was given, the rent was paid to 13 March 2023 with $565 on account. The renter was said to owe $6,472, and this was said to be the fourth occasion that the renter had been given notice to vacate under section 91ZM. According to documents submitted it was actually the first notice since the anniversary of the commencement of the residential rental agreement.

10. The Renter was given the NTV at a time when the Renter owed at least 14 days' rent, with no VCAT ordered payment plan in effect. In fact, the rent was effectively paid to 21 March 2023 on 9 June 2023, meaning the renter owed rent for 22 March 2023 to 8 June 2023 inclusive, a period of some 48 days.

11. The NTV was given to the Renter by email in accordance with section 506(3) of the *RT Act*, with the Renter providing written consent in the rental agreement at clause 9 to receive notices by email in accordance with the *Electronic Transactions Act 2000* (Vic).

12. The NTV provided at least 14 days' notice of the termination date and was the first occasion a notice to vacate had been given to the Renter since the anniversary of the rental agreement commencing.

13. I am satisfied that the Rental Providers had grounds to give the Renter the NTV, the notice is valid, complies with section 91ZZO of the *RT Act* and was validly given.

The application for possession

14. On 26 June 2023, the rental providers made application to the Tribunal for possession, rent and the bond under sections 91ZM and 213A of the *RT Act*. The renter was said not to have paid any rent since the NTV was given and the application included the following claims:

> Multiple times tried to get the rent via email and phone call but no payment received. Setted up payment plans multiple times but not paid as per arrangements made. Multiple promises to make payments failed. Seeking possession. Rental provider under financial and mental stress.[3]

15. Between 9 June 2023, the date of the NTV, and 24 June 2023, the termination date in the notice, the Renter did not make any payment towards the rent and certainly did not pay all of the unpaid rent referred to in the NTV. The Rental Providers were entitled to make the application for possession in accordance with section 91ZM(1)(c) of the *RT Act*.

16. At the time of the application on 26 June 2023, the rent was paid to 13 March 2023 with $565.84 on account, and the Renter owed 104 days' rent from 14 March 2023 to 25 June 2023 inclusive, less the monies on account, a total of $7,455.55. This was more than the bond of $2,173 and so the Rental Providers were entitled to seek the same in accordance with section 213A of the *RT Act*. With rent owed still above the bond, the Rental Providers are also entitled to a direction for the bond to be paid to them at the end of the rental agreement, if a possession order is made.

Hearing process

17. The matter first came on for hearing on 13 July 2023, at which time I adjourned the proceedings, with information given about the matters to be taken into account in determining if it is reasonable and proportionate to make a possession order:

> The matters to be considered are set out below. Any and all documents on which the parties seek to rely should be submitted to the Tribunal as soon as possible to ensure they are ready for the next hearing. The renter has strongly been encouraged to contact Justice Connect with the renter entering into a mental health plan, making application for the disability support pension, this amount insufficient to meet the monthly rent of $2346. The rent is currently paid to 13 March 2023 with $1765.84 on account.

18. The matter was relisted on 17 August 2023 but was further adjourned because insufficient notice had been given to the renter's advocate of the hearing.

19. Due to demands on listing time, the matter was not listed for hearing until 23 October 2023. At the end of the hearing the decision of the Tribunal was reserved, pending the filing of some additional information relevant to the matters the Tribunal needed to take into account:

> On or before 25 October 2023, the renter is to send to the Tribunal (at *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.

20. 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, with no further documentation or correspondence received since.
21. In contrast the agent for the rental provider has consistently written to the Tribunal advising most recently as of 4 January 2024 that the renter has paid no rent since the hearing on 13 July 2023 and has not provided any documentation to them regarding her financial capacity to pay the rent, including any superannuation or insurance/WorkCover application documents.
22. In these reasons, the Tribunal refers to documents filed for and on behalf of each of the parties, oral evidence and written submissions. It is to be noted that the evidence presented at hearing and subsequently is not always consistent with, or reflective of, the submissions made by Justice Connect for the Renter. This inconsistency impacts on the weight I have given to the evidence and propositions put forward about the impact of a possession order on the Renter.

Should the Renter be given an opportunity to pay the rent?

23. Section 91ZM(1)(d) provides that on an application for a possession order, the Tribunal may place a renter on a payment plan to pay the rent and adjourn the application in accordance with section 331.
24. As at the date of these reasons, being 12 January 2024, the rent is $2,346 per calendar month and is paid to 13 March 2023 with $1,767.25 on account. The Renter owes 304 days' rent between 14 March 2023 to 11 January 2024 inclusive, less the monies on account, an amount of $21,679.90.
25. In written submissions, the Renter acknowledged that she could not pay the rent on her own but that she was seeking consent to sublet the rented premises so that she could "*apply the sub-letting payments received towards paying off her rental arrears and also meeting ongoing rental costs*".[4] She claims she made the request to the Rental Providers and has not received a response prior to hearing. I am not persuaded that the proposal made by the Renter, just prior to the hearing, to sublet rooms as a source of income is reasonable or practical. The Renter did not explore this proposal at any stage prior to the eleventh hour of an impending hearing where possession was a genuine risk. This request to sublet is also inconsistent with the Renter's claims that she is seeking to have custody of her three children returned to her. If custody was to be sought, the Renter will need to have stable secure accommodation for her children and will need the rooms free that she is suggesting should be rented out to sub-renters.
26. Additionally at hearing, the Renter advised she was going to receive a payout related to a workers' compensation claim and had lodged a claim related to an early release of $6,000 in superannuation. The Renter was given an opportunity to file evidence that these payments would be made and has failed to do so. She has however presented an unsigned and undated letter from a cleaning company stating that she had obtained employment and would be commencing 30 October 2023 with a minimum of 25 hours a week and a weekly wage of $675.
27. Under section 331 of the *RT Act*, the Tribunal may dismiss or adjourn an application for possession, if it considers that satisfactory arrangements can be made to avoid financial loss to the

residential rental provider.

28. With the Renter,

> (a) having failed to engage with the Tribunal or agent and provide any further evidence of her capacity to pay off what are now significant arrears,
> (b) continuing to 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, and

(c) the sub-letting of the rooms not a reasonable or reliable alternative,

I am not satisfied that any arrangement can be made, or that one would be complied with, that could avoid financial loss to the Rental Providers.

29. The Renter has a history of non-payment of rent and repeated promises, and as such there is no basis on which to adjourn the proceeding.

Is it reasonable and proportionate to make a possession order?

30. Under section 330 of the *RT Act*, the Tribunal **must** make a possession order if satisfied that, in the circumstances of this case:

> (a) the Rental Providers were entitled to give the Renter the NTV and it hasn't been withdrawn,
> (b) the Renter is still in possession of the rented premises, and
>
> (c) it is reasonable and proportionate, having regard to section 330A, to make a possession order taking into account the interests of, and the impact on, the Rental Providers, the Renter and the Renter's partner.

31. Under section 330A, the Tribunal **must** have regard to the following matters in this case, for the purposes of determining whether it is reasonable and proportionate to make a possession order:

> (a) the nature, frequency and duration of the conduct of the Renter in not paying the rent payable under the rental agreement,
> (b) whether the non-payment of rent is trivial,
>
> (c) whether any other person is responsible for the non-payment of the rent,
>
> (d) the Renter's intervention order and any other relevant matter related to family violence,
>
> (e) whether the non-payment of rent has been remedied as far as practical,
>
> (f) whether the Renter will soon have the capacity to pay the rent and comply with the payment of rent in advance in accordance with the rental agreement,
>
> (g) the effect of the Renter's conduct on others as a renter,

(h) whether any other order or course of action is reasonably available instead of making a possession order,

(i) the behaviour of the Rental Providers, and

(j) any other matter the Tribunal considers relevant to the case.

32. The Renter's written submissions were limited to the matters in subparagraphs (h) and (j) above. However, it is mandatory to consider all matters under section 330A and I have done so on the basis of additional information and submissions made at hearing. Each of the criteria will be considered in the following.

(a) What is the nature, frequency and duration of non-payment of rent?

33. According to the ledger of the agent for the Rental Providers dated 12 July 2023, there have been inconsistent payments towards the rent since July 2022 when the rent was increased and the Renter officially took over the rental agreement on her own. In January 2023, Launch Housing made a payment of $2,400 towards the rent. Since that time the Renter has only made the following payments: $1,200 on 17 February 2023, $600 on 3 March 2023, $1,200 on 22 May 2023 and $1,200 on 6 July 2023. The Rental Providers' agent advised on 10 January 2024 there have been no further payments made in just over six months, and the Renter is now nine months behind in the rent when she should be a month in advance.

34. The non-payment of rent since the matter first came on for hearing before the Tribunal and the infrequency of payments in the twelve months prior is a matter that supports a possession order being made.

(b) Is the non-payment of rent trivial?

35. The non-payment of rent is not trivial. The payment of rent is a fundamental term of any rental agreement and provides the basis on which the premises is offered for lease.

36. The inability to comply with this fundamental term for an eighteen month period, and the breach of making any payment in the past six months are factors that support a possession order being made.

(c) Is anyone else responsible for the non-payment of rent?

37. The Renter is the sole person named on the rental agreement and remained living there when the other renters vacated, knowing she would need to continue to pay the rent and that the rent was going to be increased.

38. There is no other person responsible for paying the rent. However, it is noted that the Renter's partner is receiving the benefit of living in the premises, and he too has failed to make any contribution towards the rent.

39. The Renter electing to become the sole renter and the non-payment of rent by others living in the rented premises are matters that support a possession order being made.

(d) What matters related to family violence are relevant?

40. The Renter provided a final intervention order for the protection of herself and her three children against her ex-partner that was granted in June 2021. It does not appear to have an end date on it.
41. Despite this order, the Renter gave evidence that custody of the three children has been returned to the ex-partner, with a case involving child protection having been closed. The Renter says she has been speaking with Legal Aid about taking the matter to court.
42. With limited information from the Renter as to the status of any family violence orders and with custody of the children having been returned to the ex-partner who was not present when the intervention order was made, I do not have sufficient evidence available to be satisfied that this is a matter that supports a possession order not being made.

(e) Has the non-payment of rent been remedied as far as practicable?

43. For the reasons stated above, there has been no payment of rent for a considerable period of time and only one payment made after the NTV was given.
44. This is a matter that supports a possession order being made.

(f) Will the Renter soon have the capacity to pay the rent?

45. There is no evidence to suggest that the Renter will soon have the capacity to pay the rent. Despite the Renter claiming to have obtained employment and having a significant sum of money coming in under an insurance claim or for the early release of superannuation, no payment has been made in the ten weeks since the hearing was held.
46. This is not a matter that supports a possession order not being made, or the application being adjourned.

(g) Is the non-payment of rent affecting others as a renter?

47. There are no other renters named on the rental agreement that are impacted by the Renter not paying the rent. However, as the majority of rental agreements in Victoria are on the basis of joint liability for the parties named, and not joint and several, it is assumed that this consideration is intended to extend beyond simply those renters named on this particular rental agreement.[5]
48. The Rental Providers gave evidence that their daughter needs accommodation and seeks to move into private rental with friends. Given the current market, the Rental Provider's daughter is finding it difficult to secure accommodation. The Rental Provider's say that their daughter is 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.
49. The need for the Rental Provider's daughter to supplement the mortgage payments due to the Renter not paying the rent, impacting on her securing a premises and limiting her options as a renter, is a matter that weighs in favour of a possession order being made.

(h) Is any other order or course of action a reasonable alternative to a possession order?

50. The Renter submits that the Tribunal could dismiss or adjourn the possession order which would provide her with more time to find and secure alternative accommodation.

51. The Renter has also suggested that the Tribunal could make a determination that the Rental Providers' consent to sublease the premises is not required. This is an application by the Rental Providers for possession. There has not been any application by the Renter in accordance with section 82 of the *RT Act* for permission from the Tribunal to sublet and so the Tribunal does not have any power to make such an order within the current proceedings.
52. In any event, for the reasons provided above, the subletting of the rented premises is not, in my view, reasonable as no prospective renter has been identified or nominated to sublet. Even if I had the power to make the order, I would refuse such an application.
53. Opportunities have been afforded to the Renter to make payment of the rent. She has failed to pay the rent or provide any substantial evidence that would support a finding that there is a reasonable alternative option to resolve the issue of the rent not being paid and for the rental agreement to be sustained. Her need to look for alternative accommodation is not a basis on which an adjournment or other order, such as a dismissal, would be a reasonable alternative course of action. Its relevance would be to the issue of whether a possession order should be delayed or not.
54. There is no other order or course of action that is a reasonable alternative in this case that supports a possession order not being made.

(i) Is there any conduct of the Rental Providers that is a relevant consideration related to the payment of rent?

55. The Renter submits that the Rental Providers' failure to provide consent to sublet the rented premises is a matter that supports a possession order not being made.
56. I disagree. In addition to my earlier views that subletting is not a reasonable option with the Renter seeking the return of her children to live at the property, the Rental Providers have provided evidence of a recent inspection at the rented premises with photographs depicting an untidy and poorly maintained property. The addition of at least three more people, unknown to the Rental Providers, and given the additional fair wear and tear on the premises, it is not unreasonable for the Rental Providers to not have given their consent.
57. The Rental Providers' failure to provide consent to the sublet of the rented premises is not a matter that supports a possession order not being made. There is no other conduct of the Rental Providers that is relevant to this consideration.

(j) Is there any other matter that is a relevant consideration in this case?

58. There are a number of matters that the parties submit impact on them that are relevant to whether it is reasonable and proportionate to make a possession order.

Matters relevant to the Renters circumstances

59. The Renter submits that her personal circumstances and the impact a possession order would have on her, including a risk of homelessness, support a conclusion that it would not be reasonable and proportionate to make a possession order.
60. The Renter is a New Zealand woman in her 30's and initially moved into the rented premises with family and children, and now resides in the four bedroom home with her new partner. She is estranged from family and says she has no other supports she could rely on.

61. The Renter submits a possession order will have a ***significant impact on her mental health***.

62. The Renter says she suffers from a range of severe physical and mental health issues and spent two weeks in a mental health ward in early 2023. She says that if evicted this would have a detrimental impact on her health as well has her ability to engage with medical and psychiatric supports.

63. There is no documentary evidence which supports the claims made by the Renter about her current medical condition and mental health diagnosis. Nor is there any evidence that she has taken steps to seek assistance, or is currently being treated, or any opinion provided by a medical professional as to the impact a possession order is likely to have on her.

64. However, it is reasonable to expect that being evicted from your home is likely to have an impact on anyone's mental and emotional wellbeing. To what extent this will impact the Renter is unknown. The Renter claims that her mental health has been one of the key reasons she has been unable to source employment in the past and this has impacted her being able to be financially supported and deal with outstanding legal matters. Whether any impact on the Renter's mental health will be significant or the extent to which it will affect her engagement in other matters she needs to attend to, is uncertain.

65. The Renter submits that there is a real ***risk of homelessness*** if she is evicted and says prior to residing at the rented premises she experienced periods of homelessness.

66. The Renter says she is estranged from any family in Australia and her partner has a strained relationship with his mother and so they cannot live there.

67. The Renter's advocate submits that:

> There has been a severe shortage of public housing and affordable private rentals in Victoria. As the sole renter who does not have any source of income, the Respondent faces massive challenges in accessing alternative accommodation in the private and social housing rental market.[6]

68. The submissions are correct – Victoria is in the middle of a housing crisis making it incredibly difficult for those on low incomes to find accommodation. However, the Renter has been given numerous opportunities to improve her situation, and despite finding employment and having other avenues open (such as superannuation payments) she has not made any payments towards the rent. Her tarnished rental history is a matter she is ultimately responsible for and which is a key factor against her being able to find alternative accommodation. Her risk of homelessness arises due to the Renter's own actions, or in this case, her lack of action. She is a victim of her own making. Her contribution to her situation is a matter which counters the weight to be given to the risk of homelessness the Renter is facing.

69. The Renter submits she will face ***financial hardship*** from a possession order. She says she has made application for Centrelink benefits which have in the past been impacted by her visa status. The Renter is a permanent resident of Australia and has otherwise provided no evidence of any outcome of recent applications for Centrelink benefits. Her partner who resides at the property receives the Disability Support Pension but has made no contribution towards the rent. The Tribunal does not accept that the financial circumstances of the Renter will be impacted by a possession order being made, with the Renter's ability to source employment or other income

being impeded by many other factors, not related to her occupation at the rented premises. I am not persuaded that this matter is relevant to the impact a possession order will have on the Renter.

Matters relevant to the Rental Providers' circumstances

70. The Rental Providers submit that the Renter's failure to pay any rent since July 2023 is having a significant impact on them financially and mentally.
71. Oral evidence was given that JOW has been out of work since heart surgery in 2022 and UNI is the sole income earner as a child care worker. UNI gave evidence that the stress of receiving no income and having to rely on her 28 and 21 year old children to help them make the mortgage repayments means that JOW is not eating or sleeping properly from the stress. She says the Renter's failure to pay the rent consumes their conversations and is causing tension.
72. The Renter's advocate submitted that there was a lack of evidence from the Rental Providers about their financial situation. I am not sure what additional information that the Rental Providers could provide to support their claims. They are paying the mortgage and so there would be no letters of default by the mortgagee and the Rental Providers have not sought any medical help for the stress they are experiencing due to the financial pressures of paying the mortgage without any rental income.
73. I accept that having to ask your children for help to pay the mortgage in this situation would be difficult for the Rental Providers and that not having any rent coming in for a significant period of time is impacting them greatly and placing them under financial pressure.
74. It is highly probable that the impact of this financial pressure would not waver if a possession order was not made, as the Renter has given no indication that she will pay the rent moving forward. This is a matter I consider weighs in favour of a possession order being made.

Conclusion on Reasonable and Proportionate factors

75. Taking into account all of the matters identified above and how they impact on the parties, I am satisfied it is reasonable and proportionate to make a possession order.
76. The payment of rent is a fundamental term of any rental agreement and is the key motivator for residential rental providers offering their properties for lease. The Renter has been inconsistent with payments for more than 18 months and in the last six months has failed to provide any genuine effort to improve her financial situation such that she can pay the rent. I accept that the Renter may face homelessness if a possession order is made and that the same may impact her mental health. However, I am also of the view that the Renter has contributed to her current situation and is responsible, in part, for the consequential hardship she is likely to experience.
77. The Rental Providers on the other hand have given the Renter numerous opportunities to make payment and have placed themselves, and other family members, under considerable financial strain to meet their mortgage payments.
78. The ongoing breach of this residential rental agreement must come to an end. It is reasonable and proportionate, having regard to the matters under section 330A and the interests of, and the impact on, the Rental Providers and the Renter of making a possession order.

Should the possession order date be delayed?

79. The Tribunal having determined that a possession order must be made, the Renter submits that the date she needs to vacate the rented premises should be delayed for the maximum 30 days from the date the possession order is made.[7]

80. The Renter says that she has no alternative stable housing options currently available, needs time to find alternative accommodation and to connect with specialist housing-focussed support.

81. Significant time has elapsed between the hearing on 23 October 2023, and me being able to attend to these reasons. I apologise to the parties for that delay. The ten weeks that have transpired has been more than the time that would have been afforded to the Renter had a possession order been made on the day. This is in addition to the numerous adjournments that had been provided in the past at the indulgence of the Renter to obtain more information and make payments of rent prior to the final hearing. The Renter has been on notice that a possession order was probable for six months and has acknowledged at various times that the rented premises is too expensive for her and she needs to find alternative accommodation.

82. The non-payment of rent is impacting on the Rental Providers. It is highly improbable that they will be able to recover the rent arrears beyond the bond. However, they may be able to lessen the financial and emotional burden of the investment property by providing the same as rental accommodation to their daughter and her friends ahead of the commencement of the start of the tertiary education year.

83. Balancing the circumstances of the Renter and the Rental Providers, I am not persuaded that I should exercise my discretion and delay the possession order by 30 days or any period at all.

Should the issue of the warrant be postponed?

84. The Renter submits that I should exercise my discretion and delay the issue of the warrant of possession by up to 30 days in accordance with section 352 of the *RT Act*.

85. The Tribunal may consider exercising this discretion if satisfied that:

> (a) the Renter would suffer hardship if the issue of the warrant were not postponed; and
> (b) the hardship would be greater than any hardship that the Rental Providers would suffer because of the postponement.

86. The matters I have considered above relevant to the date of the possession order are just as relevant to the delay on the issue of a warrant of possession.

87. The Renter has had significant time to pay the rent and look for alternative accommodation. Her ongoing failure to pay the rent or actively engage in sourcing alternative accommodation is the fundamental reason why the Renter may face hardship in being compelled to immediately leave the rented premises.

88. The Renter should not reap any benefit from failing to take action – or as Chief Justice Herring of the Victorian Supreme Court stated in the decision of *Holden v Nuttall* [1945] VicLawRp 8; [1945] VLR 171 – the expression "hardship" should not be construed so as to effect an injustice, or enable a person to benefit from their own wrongdoing.

89. I am not satisfied that the Renter is likely to suffer hardship, not of her own making. However even if I am wrong, I am not satisfied that this hardship would be greater than the hardship to the

Rental Providers of ongoing delays in the return of the rented premises to their possession or the financial burden associated with what is already more than $20,000 in rent owing.

90. Additionally, even if the two criteria under section 352 of the *RT Act* could be satisfied, I am not of the view that it would be appropriate to exercise my discretion and postpone the issue of the warrant of possession. The request of the Renter is refused.

Summary of determination

91. In summary, the Tribunal finds that:

1. The Rental Providers gave the Renter at least 14 days' notice to vacate when the renter owed at least 14 days' rent (excluding any amount owed under a previous VCAT ordered payment plan).
2. This is the first occasion of non-payment of rent within a twelve month period starting on the anniversary of the date the residential rental agreement commenced.
3. The Renter did not pay the full amount of rent owed on or before the termination date on the notice to vacate.
4. Having made an assessment under section 331 of the *RT Act*, on the basis of the evidence that is available, VCAT is unable to find that satisfactory arrangements can be made to avoid financial loss to the Rental Providers.
5. As at the date of these reasons, being 12 January 2024, the rent is $2,346 per calendar month and is paid to 13 March 2023 with $1,767.25 on account. The rent owed to today is $21,679.90.
6. The date of application to the Tribunal was 26 June 2023 and the rent owed to that date was greater than the bond of $2,173.
7. Having regard to the matters in section 330A of the *RT Act*, it is reasonable and proportionate to make a possession order.
8. The Rental Providers are entitled to a possession order with an immediate date for the Renter to vacate the rented premises.
9. The Rental Providers are further entitled to immediately apply for the issue of a warrant of possession if the Renter does not vacate the rented premises by the date provided.

92. Orders will be made in accordance with the findings above and the requirements of section 333 of the *RT Act* as follows:

1. The renter must vacate the rented premises by 12 January 2024.
2. On termination of the residential rental agreement the Residential Tenancies Bond Authority will pay the residential rental provider $2,173 in respect of the rent owing to the date of the application.
3. The renter must now pay the residential rental provider the balance of the rent owed of $19,506.90.
4. At the request of the person who obtained the possession order and on payment of the prescribed fee, the principal registrar of VCAT must issue a warrant of possession to be executed within 14 days after the date of issue. This request may be made after 12 January 2024 and no later than 12 July 2024.

Warning to renter: If you fail to vacate the rented premises by 12 January 2024, the residential rental provider can request the principal registrar to issue a warrant of possession. You may then be forcibly vacated from the rented premises by a police officer or an authorised person carrying out a

warrant of possession.

K Campana

Acting Senior Member

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[1] With family violence proceedings relevant to this matter and in accordance with section 166 of the *Family Violence Protection Act 2008* (Vic), the names of the parties and any identifying information has been withheld.

[2] $540 per week divided by seven days provides a daily rate of $77.14285714. This daily rate is then multiplied by 365 days in the year and then divided by the 12 months in the year to get the monthly rate of $2,346.43.

[3] Details as written in the claim dated 26 June 2023 with no corrections to grammar or spelling.

[4] Paragraphs 11 to 14 of the Respondent's written submissions dated 18 October 2023.

[5] See *Mamone v Brochmann* (Residential Tenancies) [2020] VCAT 1009.

[6] Paragraph 21 of the Renter's written submissions dated 18 October 2023.

[7] Section 333 of the *RT Act* provides that a possession order must include, amongst other things, the day (being a day not more than 30 days after the day on which the possession order is made) by which the renter must vacate the rented premises.