

## **Case name: *RFY & XYF v ACV (Residential Tenancies)* [2021] VCAT 865**

### **Facts of the test case run pro-bono by Justice Connect**

Margaret\* has rented her home since 2015 and prior to the COVID-19 pandemic had never struggled to pay the rent. Before the pandemic, Margaret had been working as a rideshare driver. When the COVID-19 pandemic hit and restrictions significantly decreased the demand for rideshare services, Margaret could no longer pay her full rent. As a rideshare driver, Margaret wasn't eligible for JobKeeper and quickly signed up for JobSeeker which was a significant reduction in her weekly income. With just JobSeeker, Margaret went into debt, made difficult decisions about cutting her spending on her health, her groceries, and her pets so that she could pay half her rent. Two days after the eviction moratorium ended, Margaret's landlords attempted to evict Margaret from her home on the basis of unpaid rent.

### **Background to the law**

In March 2020, the Victorian government legislated an 'eviction moratorium' into the *Residential Tenancies Act 1997 (Vic) (RT Act)*, protecting anyone from eviction who could not pay their rent because of COVID-19. Relevantly, this moratorium included two key provisions that were relevant to this case.

First, section 537 of the RT Act which defined what is a COVID-19 reason. This included four different reasons – each of which was relied on in this case. These are:

- that someone is ill;
- that someone is unable to pay rent because of restrictions;
- that someone is unable to pay rent without suffering severe hardship; or
- that someone is unable to comply as a result of exceptional circumstances in relation to the pandemic.

Second, section 542 of the RT Act which provided that someone is not taken to have breached a term of their lease or the RT Act if it was not reasonably practicable for them to comply because of a COVID-19 reason. In repealing the eviction moratorium and implementing long-awaited amendments to the RT Act, the Victorian government put in place regulation 14 providing that the effect of s 542 was to continue until 25 October 2021.

### **Argument of the renter**

Margaret's legal team argued that as the protection of s 542 was preserved by regulation as well as common law principles, Margaret could not be evicted on the basis of rental arrears accrued for a COVID-19 reason.

## Decision

The Tribunal found that Margaret had a COVID-19 reason for not paying her rent. Despite having a COVID-19 reason for not paying her rent, the Tribunal found that Margaret could be evicted from her home pursuant to the notice to vacate issued two days after the eviction moratorium ended.

The Tribunal found that until 25 October 2021 when the effect of regulation 14 ceases, the failure to pay rent because of a COVID-19 reason is a defence for any application for compensation. This means until 25 October 2021, renters who have accrued rental arrears due to COVID-19 cannot be required to repay them. After 25 October 2021, renters may be required to repay rental arrears accrued due to COVID-19 if their landlord makes an application for compensation.

## Ramifications for Victorian renters

This decision has far reaching ramifications for Victorian renters. As a result of the decision, renters can be evicted for rental arrears accrued due to COVID-19 but until 25 October 2021 can defend any applications for compensation if the arrears were accrued due to a COVID-19 reason.

[The full decision is available here.](#)

*\*\*Client's details have been omitted due to an anonymisation order protecting their identity.*

Justice Connect ran this case pro-bono on behalf of the renter.