



Anika
Legal

Repairing rental homes

Why self-enforcement
fails tenants

JANUARY 2022



Anika Legal



Who are we?

Anika Legal is a community legal service, registered charity and social enterprise that reduces barriers to entry for legal help by providing free, ongoing legal support, 100% online.

We provide legal advice and casework to vulnerable renters through our service delivery model which leverages technology and law students, who are supervised by an experienced Principal Lawyer.

In the last 12 months, Anika has assisted 146 tenants to obtain repairs at their rental properties. We have supported our clients by providing legal advice, negotiating with their landlord and preparing them to self-represent at VCAT.

Our client base consists largely of people who are in insecure work, underemployed or unemployed (52%) and single parents (28%). The most common reasons for needing a repair were problems with water (15%), heating or cooling (13%) and roofing (12%).

“After months of trying to get any action from the landlord I broke down, burst into tears. I felt like I was on the edge of having a heart attack. At times I wanted to give up, it was all just too hard... It had just gone on for so long without any end in sight. To get the repairs completed, and in such a short time-frame - I just started to feel like me again.”

LOUISE
ANIKA LEGAL REPAIRS CLIENT

Background

Adequate housing is essential to the health and wellbeing of Victorian individuals and communities. Living in a safe home in good repair is the foundation for good mental and physical health. Despite this, Victorian tenants continue to face barriers to obtaining the rental repairs they need in order to enjoy safe, secure and functional homes.

There is a growing body of research on this issue. For example, we know that:

2.6M+
Australian households (36%)
were renting in 2016 and
this cohort is growing.¹

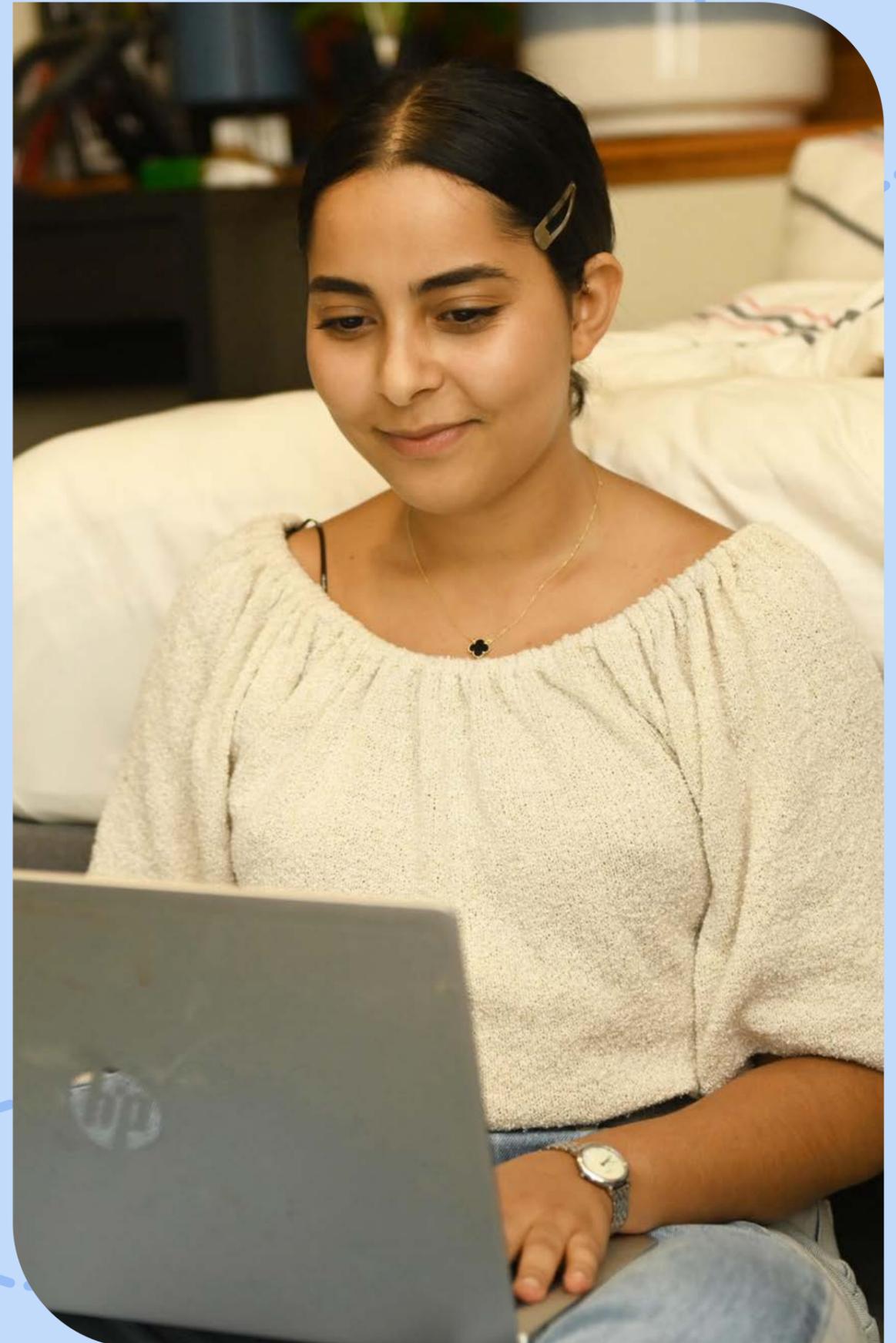
Up to 1M
Australians are living in housing
that is considered to be in poor
enough condition that it could
be harming their health.³

51%
of people who rent are
currently living in a home that
is in need of repairs. However,
tenants are often hesitant
to request repairs for fear of
negative repercussions such
as a rent increase or eviction.²

Inadequate housing can lead to
health and wellbeing impacts for
individuals and communities and
consolidates inequality.⁴

Reforms made in 2021 to the Residential Tenancies Act 1997 (Vic) (RTA) seek to address some of these impacts. However, there remains a gap in the RTA: Tenants are still required to self-enforce their rights - including seeking repairs. This means that tenants have to understand their rights under the RTA, and be willing and able to pursue those rights, in order to obtain repairs to their homes. Without access to ongoing legal assistance or further regulatory support, this model of self-enforcement is an impediment to tenants' entitlement to safe, secure and functional homes.

Anika Legal has noted the same three barriers to self-enforcement arising again and again while assisting our clients to obtain rental repairs. These insights have motivated us to develop recommendations to improve Victorians' access to residential tenancy repairs.





BARRIER 1

Without adequate legal guidance and support, tenants are often hesitant to assert their right to rental repairs.

6

There is an imbalance of power between tenants and their landlords which can render this self-enforcement model ineffective. Tenants often don't know the extent of their rights and, even when they do, they can be fearful that requesting repairs from a landlord or their agent could result in negative consequences, such as the landlord issuing an increase in rent or a notice to vacate.

Tenants are more likely to request and pursue repairs when they are assured that a legal advocate will be able to assist them to deal with any adverse action taken against them by their landlord.

Mai's* Case

Mai had lived in her rental home for three years and is the primary carer for her six children. Mai came to Anika seeking repairs to the heating in her house and black mould in the bathroom, which had exacerbated one of her children's asthma. Whenever Mai would ask her landlord about the repairs, he would change the subject or belittle her. Mai had been unaware that she had the right to go to CAV or VCAT to help her to enforce her repairs claims until she engaged Anika's services.

When Mai mentioned CAV and VCAT to her landlord, he threatened that he would not give Mai a reference for her next tenancy application unless she dropped her repairs claim. This shook Mai, but with the support and assurance of her case worker Mai obtained a condition report from CAV which her landlord eventually acted on.

Hannah's* Case

Hannah lived in a sharehouse which required costly repairs to the bathroom, including a persistent mould problem. Hannah's landlord had only agreed to organise the repairs if Hannah and her housemates paid the full cost of the mould removal, insisting that they were responsible for the mould.

Hannah knew that it was unreasonable for her and her housemates to bear the cost of the repairs, but she was anxious about pursuing the repairs in case her rent was increased to cover the cost of the mould removal. With ongoing legal assistance, Hannah was able to pursue the repairs she needed with confidence that her rights would be advocated for if any further issues arose with her landlord.

7



Black mould at the rental home of an Anika client.



BARRIER 2

Tenants sometimes give up on pursuing repair requests, even when the repair needed presents a serious risk to their health, safety or wellbeing.

8

The need for repairs to the home is usually one issue in a myriad of other things going on in a tenant's day-to-day life. However, the self-enforcement model assumes that tenants have the time, space and clarity to pursue their repairs. The burden of self-enforcement means that many clients abandon their rental claims, even where there is a very serious issue in the home which presents a risk to health, safety or wellbeing.

The self-enforcement model expects too much of tenants, especially those who are already experiencing disadvantage and marginalisation. Without reliable, hands-on legal assistance and other supports, the most disadvantaged tenants may put repair requests to one side when other life stressors arise. In some cases, even when there is an avenue through which to pursue a repair and legal assistance is available, Anika's clients have chosen not to engage with the legal process as they are overwhelmed by the prospect of self-enforcement. This may manifest as unresponsiveness from a client, despite it appearing unlikely that the client's living situation has improved.

Tina's* case

Tina has severe and long term mental health issues and is a domestic violence survivor. When Tina engaged with Anika through her social worker, she had lived in her rental home for 12 years. Tina's home required extensive repairs: the floors had fallen through in the bathroom and laundry, the stove and oven were not functioning, there were visible cracks in most of the walls and fungi was growing in various areas of the house.

Tina's social worker described the house as 'structurally unsound' and stated it was becoming 'uninhabitable'. During the course of her 12 year tenancy, Tina has been issued with three notices to vacate, and was fearful that taking action to pursue repairs to her home would result in eviction. After a few weeks engagement with Anika, Tina's social worker informed us that Tina did not wish to pursue her claim due to worsening mental health and fear of losing her house.



9

Cracks on internal walls jeopardising the structural integrity of an Anika client's rental home.

Simon's* case

Simon and his partner, Britt, have been unable to maintain employment due to ongoing health conditions. Simon suffers from an auto-immune condition and Britt is in poor health following a recent heart attack. Simon came to Anika due to a broken heating and cooling system leaving their home so cold in winter that he and Britt could see their breath. There were also multiple electrical faults in the house, including a broken dishwasher and exposed wiring. Anika assisted Simon in negotiations with his landlord's agent for a few weeks.

This included an interaction in which the agent suggested that Simon should vacate the property if he was unhappy with his living conditions. Suddenly, Simon became unresponsive to his Anika caseworker's calls and emails and, after a few months of being unable to reach Simon or Britt, Simon's file had to be abandoned. There is no way of knowing whether Simon and Britt's living conditions have improved or whether the landlord had continued to let the premises fall into disrepair.



BARRIER 3

The self-enforcement model leaves scope for landlords and their agents to unreasonably ignore or delay requests for repairs.

10

As tenants are not always in a position to pursue repair claims, the self-enforcement model relies on the goodwill of landlords to maintain the properties they rent out. This leaves scope for landlords to unreasonably ignore, delay or refuse the repair requests without fear of repercussion.

Many tenants come to Anika after they have made requests for repairs to their homes which have been ignored by their landlord or the landlord's agent, or repeatedly delayed. Sometimes the repairs being put off are urgently required to address serious risks to the tenant's health and safety. It often takes the involvement of a legal service or regulatory body before the landlord or their agent is spurred on to action repair requests.

Khalid's* case

Kahlid lives in a rental home with his wife and three children. Kahlid's home was unbearably cold and draughty because of the poor condition of the windows and inadequate heating. The five person family was sleeping in one room so that they could share the warmth of two portable heaters and Kahlid's children were beginning to develop illnesses from the cold and the dampness.

Over months, Kahlid's repeated requests for repairs from his landlord were ignored. It was only when Kahlid engaged Anika to send a formal compliance request to the landlord asserting the possibility of lodging VCAT proceedings that the repairs were finally actioned for Kahlid and his family.

Lyda's* case

Lyda came to Anika with a long list of urgent repairs, including extensive mould, unsecured windows and leaks. The defects in Lyda's home were impacting her wellbeing and sense of security and needed to be actioned quickly.

However, the repairs were continually being delayed by the landlord's agent and, after months, none of the repairs had actually been completed. Once Lyda engaged legal assistance to negotiate on her behalf, there was a noticeable shift in urgency from the agent and the repairs were promptly completed.

11



Extensive mould problems are common in the rental homes of tenants who approach Anika for legal assistance.

Conclusion

There is a lack of regulatory support for tenants who are unable to self-enforce their right to rental repairs under the RTA.

As we have identified, there are a number of barriers to self-enforcement which can render the current system for obtaining rental repairs ineffective. Tenants are often unwilling or unable to pursue the repairs they need, even when the untended repair is significantly affecting the safety, health or wellbeing of the tenant and their loved ones. When repairs are requested, some landlords and their agents exploit the self-enforcement system by ignoring repair requests or delaying action on urgent repairs. Clearly, further action is needed.

Our experience assisting clients to obtain tenancy repairs tells us that the following actions would greatly improve Victorian tenant's access to safe, secure and functional homes:

SHORT TERM ACTION:

1. Fund more legal services to make tenancy repairs casework more accessible to Victorians.

LONG TERM ACTION:

2. Develop alternative mechanisms for enforcing tenancy repair requests that don't rely on tenants self-enforcing their rights.
 - a. Consumer Affairs Victoria (CAV) should conduct a minimum number (20-100) of random inspections at premises where tenants have submitted, but neglected to pursue, a complaint with CAV, VCAT, Victorian Legal Aid or other NGO tenancy services.
 - b. The Director of Consumer Affairs should be provided with powers to investigate and prosecute serious repairs complaints.
3. Fund the Residential Tenancies Commissioner to undertake research into the quality of housing subject to repair requests and the circumstances and demographics of tenants who don't pursue repairs claims.
4. Introduce a civil penalty for landlords who fail to perform adequate repairs in a timely manner that doesn't require enforcement by the tenant.

**All names and other identifying features have been altered or removed to protect the privacy and confidentiality of Anika's clients.*



ENDNOTES

1. Australian Institute of Health and Welfare, 'Home ownership and housing tenure' (2021). Accessible at: <https://www.aihw.gov.au/reports/australias-welfare/home-ownership-and-housing-tenure>
2. CHOICE, National Shelter and NATO, 'Disrupted: The consumer experience of renting in Australia' (2018). Accessible at: <https://shelter.org.au/site/wp-content/uploads/Disrupted-2018-Report-by-CHOICE-National-Shelter-and-NATO-Web-Version.pdf>
3. Emma Baker, Laurence Lester, Rebecca Bentley and Andrew Beer, 'Poor Housing Quality: Prevalence and health effects', *Journal of Prevention & Intervention in the Community* (2016), 44:4, pp 219-232. Accessible at: <https://doi.org/10.1080/10852352.2016.1197714>
4. WHO, 'WHO Housing and Health Guidelines' (2018), pp 1-5. Accessible at: <https://www.who.int/publications/item/9789241550376>

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