

Jemmeson & Fisher Pty Ltd

ABN 70 626 770 812
PO Box 256, Darlinghurst
NSW 1300
E mail@jemfish.com.au
www.jemfish.com.au

Sydney

Level 9
162 Goulburn Street
Sydney
NSW 2010
T 02 9267 6263

Melbourne

Level 40
140 William Street
Melbourne
Vic 3000
T 03 9098 8739

Brisbane

Level 27, Santos Place
32 Turbot Street
Brisbane
Qld 4000
T 07 3181 5608

Our Ref: BM:5947

The Directors, OurProperty Pty Ltd
16 Dennistoun Street
Sunnybank Hills QLD 4109

24 January 2020

Dear Sir,

RE: ADVICE ON s51(3)(b) RESIDENTIAL TENANCY ACT 1997 (VIC)

We refer to the above matter and on *s51(3)(b) of Residential Tenancy Act 1997 (VIC)* (the Act).

We note that OurProperty payment platform offers direct debit facilities as a method of payment for rent. The direct debit facility is through the financial institution, Westpac Bank which charges a levy on the tenant to utilise their facilities. The charge is a bank surcharge, which is paid directly to Westpac to manage the transaction. We also note that OurProperty does not control the bank's levy on the usage of the direct debit facility.

We note that *section 51(3)(b) of Residential Tenancy Act 1997 (Vic)* is that a person must not demand or receive from a tenant a charge or indemnity for a charge in relation to the establishment or use of direct debit facilities for payment of rent.¹ The Act prohibits requiring a tenant to pay rent using direct debit facilities that incurs fees however the charge is a bank charge and not a charge from OurProperty.²

The intention of the Act is to prevent the tenant to pay by direct debit in circumstances that entails the payment of a charge for use of the direct debit facility.³ However, you are willing to provide rental payment options that will not incur a fee, such as payment by cash at any Australia Post Outlet. In the case of *Kapke v Blair*, it was found by VCAT that there was no breach of the Act because there has been no demand of a charge to pay rent for using direct debit facilities.⁴ The Tribunal notes that the prohibition in the Act applies when the third party demands or receives from a tenant a charge to use the direct debit facilities.⁵ The fact that you

¹ *s51(3)(b) of Residential Tenancy Act 1997 (VIC)*

² *Palmer v Hutchinson (Residential Tenancies) [2013] VCAT 873 (29 May 2013)*

³ *Palmer v Hutchinson (Residential Tenancies) [2013] VCAT 873 (29 May 2013)*

⁴ *Kapke v Blair (Residential Tenancies) [2008] VCAT 2648 (17 November 2008)*

⁵ *Kapke v Blair (Residential Tenancies) [2008] VCAT 2648 (17 November 2008)*

provide different methods of payment of rent with free options means it is not a demand from a tenant.

We refer to the proposed reforms of the Act and note that the reforms include that at least one free method of payment of rent is required to be provided to the tenant. Also, any extra costs involved with the method of payment of rent should be disclosed to the tenant for consent. OurProperty has acted in accordance with the reforms by providing free options as method of payment for rent to the tenant. Our Property also provides disclosures on the rental agreement that there are charges involved in using the direct debit facility. As the Act currently stands that it may not be satisfied that there are charges involved in demanding or receiving for use of the direct debit facility. However, once the reforms come into effect, it is in our opinion that you shall be acting within the best intention of the Act by not demanding from the tenant to pay through direct debit facilities.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Bava Manugaran', written over a vertical line.

Bava Manugaran
Solicitor