

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2024/8038

CATCHWORDS

Seeking consent to sublet rented premises, should renter specify details of proposed renter or should consent be given where no details of proposed sub-renter are provided to rental provider. Section 82 *Residential Tenancies Act 1997* (Vic).

APPLICANT	Michael David Peterson
RESPONDENTS	Svyatoslav Pidgorny Tanya Pidgorny
WHERE HELD	Melbourne
BEFORE	Member P Tyler
HEARING TYPE	Hearing
DATE OF HEARING	15 May 2024
DATE OF ORDER	15 May 2024
DATE OF WRITTEN REASONS	26 June 2024
CITATION	Peterson v Pidgorny (Residential Tenancies) [2024] VCAT 602

ORDER

1. The application is dismissed.

P Tyler
Member

APPEARANCES:

For the applicant

In person and Mr Marchese, solicitor

For the respondent

Mrs T Pidgorny and Ms Khudruj, Agent



REASONS

- 1 This application concerns a periodic tenancy between the applicant renter, Michael Peterson and the rental providers, Tanya and Svyatoslav Pidgorny.
- 2 Through the rental providers' agent, Ms Khudruj, Mr Peterson made a number of requests that Mr & Mrs Pidgorny consent to him subletting the rented premises. At the time of the requests Mr Peterson did not specify the identity of any proposed sub-renter nor did he specify any intended term for the proposed sub-tenancy.
- 3 Ms Khudruj told Mr Peterson that consent was refused but did not give a reason for the refusal.
- 4 Mr Peterson engaged the services of Justice Connect which made contact with Ms Khudruj seeking consent to Mr Peterson's request to sub-let the rented premises. Ms Khudruj stated that consent was refused and that there was no specific reason for the refusal.
- 5 Section 82 of the *Residential Tenancies Act 1997* (Vic) ('RT Act') states as follows:
 - (1) A renter may apply to the Tribunal for a determination that the consent of the residential rental provider to the assignment or sub-letting of the whole or any part of the rented premises is not required if—
 - (a) the residential rental provider withholds consent; and
 - (b) the renter believes that the withholding of the consent is unreasonable.
 - (2) If, after giving each party an opportunity to be heard, the Tribunal determines that consent is not required, the assignment or sub-letting may go ahead without the residential rental provider's consent.
- 6 On 5 March 2024, an application was made on behalf of Mr Peterson seeking an order that:

Determination that the consent of the RRP to the assignment or sub-letting of whole or part of the rented premises is not required pursuant to section 82 of the Residential Tenancies Act 1997.
- 7 In this case the renter did not specify any potential sub-renter on until the hearings of the proceeding and the rental provider did not give any reason for refusing consent for Mr Peterson to sublet the rented premises.
- 8 At the first hearing before me on 28 March 2024 Ms Khudruj told the Tribunal the reason for the refusal was that the building insurance policy held in respect of the rented premises would not cover a rented premises which had been sub-let.
- 9 The solicitor for Mr Peterson had not been provided with details of the relevant insurance policy and the hearing was adjourned so that the evidence could be exchanged.



- 10 A further hearing took place on 26 April 2024 and although the insurance documentation had been provided to Mr Peterson’s solicitor, Ms Khudruj and Mrs Pidgorny were unable to identify any particular provision in the documents demonstrating that the insurance would not apply to a situation where a premises had been sub-let. I therefore reject this as a reasonable ground for refusing to give consent to sub-letting the rented premises.
- 11 The proceeding was again adjourned to allow the parties to make submissions as to whether, in the circumstances, the withholding of consent was unreasonable and specifically if the request for consent was a general consent that enabled Mr Peterson to sublet the premises to anyone he chose without nominating a particular party or if the request for consent should have related to a specified proposed sub-renter/s.
- 12 A further hearing took place on 15 May 2024 prior to which the solicitor for Mr Peterson provided a written submission which, amongst other things, asserted that both ss 81 & 82 of the RT Act and the original lease do not specify the requirements of any proposal to sublet the rented premises and therefore consent should be given in the current circumstances.
- 13 I consider this proposal to be inconsistent with the general intention of the RT Act in relation to sub-tenancies. For example, Section 91R allows a renter to apply to the Tribunal for the purposes of creating a new tenancy agreement with a person who is not a party to the existing lease. If the Tribunal does give consent, it must first have regard to s91T which states the Tribunal is satisfied ‘the applicant could reasonably be expected to comply with the duties of a renter under a residential rental agreement.....’. To make such an assessment the Tribunal would need to know the identity of the proposed sub-renter and would have to make enquiries about them in order to satisfy the test. It would therefore be reasonable that the ability to make such enquires would apply to rental providers generally.
- 14 It was suggested by the solicitor for the renter that a compromise solution could be where the renter would agree to sublet the premises to no more than two additional individuals on the basis he provided the Residential Rental Provider with certain particulars about those parties within two weeks of the subtenancy commencing.
- 15 The major difficulty with this proposal is that the tenancy would have already commenced and the rental provider would not be able to terminate it simply because they were dissatisfied with the credentials of the proposed renter.
- 16 Mrs Pidgorny submitted that if Mr Peterson sublet the rental property it would amount to him conducting a business at the rented premises and that this activity was not permissible according to the insurance policy. I do not consider that letting or subletting a residential premises for residential purposes to be classified as a business other than a rental arrangement that was for short term tenancies such as an Airbnb.



- 17 The question therefore to be answered by the Tribunal is whether the withholding of consent by the Residential Rental Provider can be regarded as unreasonable in circumstance where details of the proposed sub-renter are not disclosed.
- 18 It is usual practice by Residential Rental Provider's and their agent to make an assessment of proposed renters before entering into a tenancy agreement. This practice is common, understandable and prudent. It is also reflected in ss91R and 91T of the RT Act where the Tribunal is required to make such enquiries. Assessments take into account a range of issues such as the proposed renter's rental history in regard to factors including the payment of rent, care of rented premises and compliance with the terms of previous rental agreements.
- 19 A further and important factor to be taken into account is the proposed renter's ability to pay the rent and therefore the renter's sources and reliability of income are relevant.
- 20 In the circumstances of this case, Mr Peterson has not requested consent to a subletting arrangement in respect of any particular person/s and therefore it is not possible for the Residential Rental Provider's to make any assessment of a proposed sub-renter/s. The request for consent in this case is to sublet the premises to the world at large and I consider the withholding of consent as reasonable.
- 21 Accordingly, the proceeding is dismissed.

P Tyler
Member

