

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**RESIDENTIAL TENANCIES DIVISION**

**RESIDENTIAL TENANCIES LIST**

VCAT REFERENCE NO: R2023/38794

**CATCHWORDS**

Application for compensation by a renter claiming notice of proposed rent increase is invalid – section 44(3)(b) of the *Residential Tenancies Act 1997* – method by which the rent increase was calculated – notice is invalid – renter paid rent increase set out in invalid notice for 12 months – renter believed there was a legal obligation to pay rent increase – renter acted reasonably – residential rental provider to refund renter amount of rent increase as compensation.

Sections 44, 45, 46, 47, 48, 452 and 472(1)(f) of the *Residential Tenancies Act 1997* (Vic).

<b>APPLICANT</b>	NSV
<b>RESPONDENT</b>	Rujia Zang
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Member Dr L Bygrave
<b>HEARING TYPE</b>	Final Hearing
<b>DATE OF HEARING</b>	4 June 2024 and 8 July 2024
<b>DATE OF ORDER</b>	12 August 2024
<b>CITATION</b>	NSV v Zang (Residential Tenancies) [2024] VCAT 766

**ORDER**

For the written reasons provided, the Tribunal orders that:

1. The file is closed to any person without further order of the Tribunal in accordance with section 146(4)(b) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).
2. The name of the renter is anonymised to ‘NSV’ in accordance with section 166 of the *Family Violence Protection Act 2008* (Vic).
3. The residential rental provider must pay the renter compensation in the amount of \$780.00.

Dr L Bygrave  
**Member**



**APPEARANCES:**

For Applicant

Warren Wheeler, Tenant Advocate Peninsula  
Community Legal Centre

For Respondent

Michael Pang, Property Manager Hoyee  
International, on 4 June 2024

No appearance on 8 July 2024



## REASONS

1. NSV ('the renter')<sup>1</sup> seeks a refund of \$1,235.00 associated with the payment of increased rent for a rental property in Melbourne.
2. The basis of the renter's application is that Rujia Zang ('the residential rental provider') gave the renter an invalid notice of proposed rent increase dated 7 February 2022.
3. The renter claims the notice of proposed rent increase did not comply with the statutory requirements and as such, she has overpaid the rent by the amount of the increase over a period of 12 months and is entitled to be refunded this overpayment.
4. The calculation of the \$1,235.00 claimed by the renter in the application is not set out in documents before the Tribunal and submissions by the renter's representative refer only to the rent increase in the notice of proposed rent increase dated 7 February 2022. This amount is \$780.00 (\$65.00 per month for 12 months).
5. The application was heard over two days commencing on 4 June 2024. The renter and the residential rental provider were represented on this day; however, the matter was adjourned to 8 July 2024 to allow the parties to file further evidence and make written submissions.
6. The renter's representative filed written submissions and documents with the Tribunal and served a copy on the property manager representing the residential rental provider on 1 July 2024. They appeared in person at the hearing on 8 July 2024. The renter did not attend the hearings to give oral evidence and relied on a statutory declaration dated 27 June 2024.
7. Neither the residential rental provider nor their property manager provided further evidence or submissions and they did not appear at the Tribunal hearing on 8 July 2024.
8. For the reasons set out below, I find the notice of proposed rent increase dated 7 February 2022 is invalid and order the residential rental provider to refund the renter compensation in the amount of \$780.00.

## Issues

9. The issues for determination are whether:
  - (a) the notice of proposed rent increase dated 7 February 2022 is invalid; and if so,
  - (b) the renter is entitled to compensation for the increase in rent amount paid in accordance with the notice of proposed rent increase dated 7 February 2022.

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<sup>1</sup> The renter has sought an order to be made anonymising their name in accordance with section 166 of the *Family Violence Protection Act 2008* (Vic). The file is closed to any person without further order of the Tribunal in accordance with section 146(4)(b) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).



## Relevant legislation

10. As the renter is seeking compensation, the application has been considered under sections 452 and 472(1)(f) of the *Residential Tenancies Act 1997* (Vic) ('the Act'). Section 452 of the Act states that an application can be made to the Tribunal if there has been a dispute or a breach of a residential rental agreement or the provisions of the Act, and section 472(1)(f) allows the Tribunal to make orders including the payment of compensation.
11. The legislative provisions relevant to rent increases are set out in sections 44 to 48 of the Act. Section 44(3) states the following requirements that *must* be included in a notice of proposed rent increase:
  - (3) The notice of a proposed rent increase must include—
    - (a) the amount of the rent increase; and
    - (b) the method by which the rent increase was calculated; and
    - (c) a statement informing the renter of the renter's right under section 45 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent.
12. A rent increase in contravention of section 44 of the Act 'is invalid': section 44(5).
13. Section 45 of the Act details the process for a renter to 'complain' to the Director of Consumer Affairs Victoria ('CAV') 'about excessive rent' in writing within 30 days of the notice of rent increase being given. Section 46 of the Act sets out the procedure for a renter to make an application to VCAT 'about excessive rent', and sections 47 and 48 stipulate the orders that can be made by the Tribunal.

## Evidence

14. The renter and the residential rental provider signed a residential tenancy agreement in relation to the rented property on 25 September 2018. The period of the agreement was for 12 months with the agreement continuing as a periodic tenancy.
15. A notice of proposed rent increase dated 7 February 2022 was issued by the residential rental provider to the renter on 8 February 2022. This notice included the following information:

### **Proposed rent increase**

I intend to increase the rent as follows:

Current rent amount (\$) 2,390.00 per month

New rent amount (\$) 2,455.00 per month

Amount of rent increase (\$) 65.00 per month

Start date of increased rent: 05 May 2022

Method used to calculate rent increase: 15.00 [*sic*] per week increase based on similar properties in area.



16. A residential rental agreement dated 19 May 2022 stated a rent amount of \$2,455.00 per calendar month. This agreement was not signed by either the renter or the residential rental provider.
17. The rent ledger shows the renter paid the increased rent amount of \$2,455.00 per month on 3 June 2022, 4 July 2022, 4 August 2022, 2 September 2022, 4 October 2022, 7 November 2022, 5 December 2022, 5 January 2023, 2 February 2023, 6 March 2023, 4 April 2023 and 5 May 2023. The amount of this rent increase (\$65.00 per month for 12 months) totals \$780.00.
18. The renter received a further notice of proposed rent increase dated 16 March 2023 and the rent ledger shows the rent amount increased to \$2,694.00 on 5 June 2023. For completeness, there is no evidence before me regarding the notice dated 16 March 2023 and the renter's representative said at the hearing on 8 July 2024 that this notice is not part of the renter's claim for compensation.
19. The renter did not at any time make a complaint to the Director of CAV or make an application to the Tribunal about excessive rent.
20. There is no evidence before the Tribunal about whether the renter believed the rent increase stated in the notice dated 7 February 2022 was excessive. The renter's representative submitted the renter paid the rent increase because she believed she was legally obliged to pay the stated amount and feared her tenancy would be at risk if she did not pay.
21. The residential rental provider was first notified in writing that the notice of proposed rent increase dated 7 February 2022 was invalid when the renter's representative wrote a letter to the property manager representing the residential rental provider on 8 November 2023.
22. The property manager representing the residential rental provider replied to the renter's representative by email on 10 November 2023 stating that, if the renter wishes to challenge the rent increase, she 'must ask for an assessment within 30 days' of the residential rental provider giving the written notice about the rent increase. The letter further stated that, as the property manager 'did not receive any Consumer Affairs notices challenging the rent increase within the stipulated 30-day period..., [the] **rent increases remain in effect**'. [emphasis in original]
23. The renter vacated the rental property on 4 December 2023.
24. A statutory declaration filed by the renter dated 27 June 2024 set out her difficult personal and family circumstances in the 2022–2023 period (including experiencing family violence and declining mental health). These circumstances also appear to be part of the reason the renter did not dispute the notice of proposed rent increase dated 7 February 2022.



## Consideration

### A: Is the notice of proposed rent increase dated 7 February 2022 invalid?

25. The preliminary issue for determination is whether the notice of proposed rent increase dated 7 February 2022 satisfies section 44(3)(b) of the Act, which states the notice *must* include ‘the method by which the rent increase was calculated’. It is accepted that the notice of rent increase dated 7 February 2022 otherwise meets the requirements of section 44 of the Act.
26. The sufficiency of information required to comply with section 44(3)(b) of the Act decision has been considered in recent decisions by the Tribunal.
27. In *Boyce v Mariella Nominees Pty Ltd ATF Lorusso Family Trust (Residential Tenancies)* [2023] VCAT 89, Member Klingender concluded:
- [25] It is clear that a notice of rent increase must include the method by which the rent increase was calculated and the details of the process and calculation used to reach the new rent amount...
- [27] The notice of rent increase...should contain sufficient information to the renters to enable them to not only answer the question as to why it is given, but also enough information for them to determine whether the rent being proposed is excessive and should be challenged.
- [28] A simple reference to “Comparative Market Analysis” with no further information about the properties that were used, their location or features, which would enable the renters to make a proper assessment about the “reasonableness” of the increase, is in my view against the spirit of purpose of the requirement to provide the method of calculation...
- [30] I find the reference to a “Comparative Market Analysis” with no further information about that analysis fails to satisfy the requirements of s 44(3)(b) that the method of calculation be provided, or the requirements of the prescribed form by providing details of the process used for that method of calculation.
- [31] The notice or rent increase is invalid.
28. The decision of *Kennedy v Pan (Residential Tenancies)* [2023] VCAT 529 also considered that ‘a reference to “market review”, with no further information about what comparable or other properties might have formed the basis of that market review, fails to meet the requirements of s 44(3)(b)’: at [27].
29. This approach was considered and accepted in the recent decision of Senior Member Campana in *Maurer v Sia (Residential Tenancies)* [2024] VCAT 571: at [21].
30. I concur with the approach taken in these decisions.
31. The notice of proposed rent increase dated 7 February 2022 describes the ‘method used to calculate the rent increase’ as follows: ‘15.00 [*sic*] per week increase based on similar properties in area’.
32. This notice provides no details or analysis about what those ‘similar properties’ were (for example, the size of the property, the number of



bedrooms/bathrooms, or whether these properties are an apartment/house/townhouse), no description of the ‘area’ and no dates when any comparative rental properties may have been rented at a comparable amount.

33. I am satisfied the information about the ‘method used to calculate rent increase’ contained in the notice of proposed rent increase dated 7 February 2022 was not sufficient for the renter to determine whether the rent increase being proposed was excessive and should be challenged, or to make any assessment about the reasonableness of the rent increase.
34. I find the notice of proposed rent increase dated 7 February 2022 does not satisfy section 44(3)(b) and is therefore invalid under section 44(5) of the Act.

### **B: Is the renter entitled to compensation?**

35. As I am satisfied the notice of proposed rent increase dated 7 February 2022 is invalid, I now consider whether the renter is entitled to compensation in the amount of the rent increase paid in accordance with this notice.
36. The only submission received from the property manager representing the residential rental provider (both in the email dated 10 November 2023 and at the hearing on 4 June 2024) is that the rent increase remains ‘in effect’ because the renter did not challenge the notice of proposed rent increase dated 7 February 2022 with the Director of CAV within 30 days of the notice being issued as provided in section 45 of the Act. For clarity, the evidence shows the renter did not make any application about ‘excessive rent’ under either section 45 or section 46 of the Act.
37. I accept that sections 45 and 46 of the Act provide a statutory pathway for a renter to follow where they seek to complain about a rent increase that is ‘excessive’. However, the Act does not contain any provision to deal with a situation where a renter disputes whether a notice of proposed rent increase is valid because it does not meet the requirements of section 44 of the Act.<sup>2</sup>
38. The renter’s representative submitted at the hearing on 8 July 2024 that the issue *in this circumstance* is not whether the proposed rent increase was excessive. Rather, the issue is whether the renter is required to pay a rent increase where the notice of proposed rent increase is invalid under the Act.
39. The renter’s representative provided compelling written and oral submissions: in effect, that rent collected in accordance with an invalid notice has been ‘unjustly received’ by the residential rental provider and ‘ought to be returned’ to the renter. The renter’s representative referred to *Jeffrey v Fitzroy Collingwood Rental Housing Assoc Ltd* [1999] VSC 335, a decision by Harper J that considered an appeal in a matter where a rooming house resident claimed he had mistakenly paid rent in accordance with a series of invalid rent increases. Harper J stated:

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<sup>2</sup> This is discussed extensively in the decision of Senior Member Campana in *Maurer v Sia (Residential Tenancies)* [2024] VCAT 571 at [10]-[12].





[37] The appellant submitted that, in paying the increases in question, he was acting under a mistake of law. Such a mistake, it is now settled, may found a claim for the recovery of the amount by which the person making the payment was over-charged... [T]he claimant is *prima facie* entitled to recover moneys paid under a mistake if it appears that the payment was made in the unfounded belief that there was a legal obligation to pay, or that the recipient was legally entitled to the funds in question...

[38] Once the plaintiff has overcome the burden of establishing on the balance of probabilities that a causative mistake has been made, the defendant will be placed under a *prima facie* obligation to make restitution...

[44] Each of the rent increases...were invalidly imposed. Being invalid, the moneys acquired by that mechanism must be returned to him (the appellant) from whom they were invalidly extracted...

[45] It would in my opinion be wrong for this Court to allow, at least as a matter of course, the retention by the charging authority of moneys obtained following an invalidly imposed rental increase. To do so...would be to nullify those legislative provisions by which the invalidity is proclaimed.

40. The renter's representative submitted that the renter acted reasonably and paid the rent increase set out in the notice of proposed rent increase dated 7 February 2022 because she mistakenly believed she was legally obliged to pay the rent increase.
41. The evidence of the renter supports the contention that she did not know the notice of proposed rent increase dated 7 February 2022 was invalid until she received assistance from the Peninsula Community Legal Centre for other matters sometime later in 2023. This is demonstrated by the rent ledger that shows the renter paid the increased rent amount of \$2,455.00 set out in the notice of proposed rent increase dated 7 February 2022 for the period of 12 months from 3 June 2022 to 5 May 2023.
42. I have also considered the recent decision by Senior Member Campana in *Maurer v Sia* that observes the following about the payment of compensation relating to an invalid notice:

[26] I do not consider that the overpayment of rent from an invalid rent increase automatically entitles the renter to a refund of the difference... [The] relevant matters to be taken into account in any application for compensation...[includes] mitigation, the rent charged not being excessive or the renter not taking issue with the lack of information in the notice...

[27] Any claim for compensation falls to be determined on its own facts, and the Tribunal's power to make any order it *thinks fit* is discretionary, taking into account relevant considerations and principles.<sup>3</sup>

[emphasis in original]

43. I agree that a claim for compensation must be considered on the relevant facts and principles. In the circumstances of this matter, this includes any

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<sup>3</sup> *Maurer v Sia (Residential Tenancies)* [2024] VCAT 571.





action by the renter to mitigate her loss and whether the renter believed the rent increase was excessive.

44. The renter knowingly paid the increased rent amount and did not dispute the validity of the notice of proposed rent increase until approximately 20 months after it was issued. The renter submits that she acted reasonably in complying with the notice because she mistakenly believed she was legally obliged to pay the increased amount, feared her tenancy would be at risk if she did not pay it and there was not sufficient information in the notice to know whether the rent increase was excessive. The renter's personal circumstances during this period, which included family violence and declining mental health, also contributed to her not disputing the notice of proposed rent increase dated 7 February 2022. I find the renter mitigated her loss as much as her circumstances and the relevant facts of the situation allowed.
45. I am satisfied the renter, on the basis of the information stated in the notice of proposed rent increase dated 7 February 2022, could not have known whether the rent increase was excessive or that the notice was invalid. I accept the renter did not know the notice dated 7 February 2022 was invalid until she received assistance from her representative. I further note, consistent with the decision in *Shafer v Bourke (Residential Tenancies)* [2015] VCAT 874, that the renter paying the increased rent amount in accordance with the invalid notice 'does not validate something that is invalid': at [13].
46. Finally, I consider it is also relevant that the residential rental provider has given no evidence or made any submissions as to why the overpayment of rent based on the invalid notice dated 7 February 2022 should not be returned to the renter.
47. Considering all the evidence, I find the renter has experienced a loss due to the overpayment of rent in accordance with the invalid notice dated 7 February 2024 and is owed compensation in the amount of \$780.00.

## Decision

The Tribunal orders:

- 1 The file is closed to any person without further order of the Tribunal in accordance with section 146(4)(b) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).
- 2 The name of the renter is anonymised to 'NSV' in accordance with section 166 of the *Family Violence Protection Act 2008* (Vic).
- 3 The residential rental provider must pay the renter compensation in the amount of \$780.00.

Dr L Bygrave  
Member

