



The Standard for Success.

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18 December 2013

Coroner Jacinta Heffey
Coroners Court of Victoria
Level 11
222 Exhibition Street
MELBOURNE VIC 3000



By email: cpuresponses@coronerscourt.vic.gov.au

Dear Coroner,

**INVESTIGATION INTO THE DEATHS OF CHASE AND TYLER ROBINSON
COURT REF: COR 2010 002037 / 002038**

I refer to your letter of 13 September 2013 received on 17 September 2013.

In relation to the recommendation B addressed to The Real Estate Institute of Victoria Ltd I advise as follows.

Revision of REIV copyright residential leasing and managing authority

Following the outcome of the inquest into the deaths of Sunil Patel, Jignesh Sadhu and Deepak Prajapati and related litigation in the County Court of Victoria (Pham & Ors v. Parissis Pty Ltd (t/as Bells Real Estate): [2012] VCC 8950, the REIV undertook a revision of its copyright residential leasing and managing authority, insofar as it dealt with property management.

Prior to the revision the authority provided a "Level of Service" for property management which stated:

"Level of Service

The Client acknowledges that the level of services to be provided by the Agent has been negotiated and is **attached or *as follows (*delete, if does not apply).*" A space then followed for the insertion of services, if they were not attached.

Anecdotal evidence available to the REIV indicated property managers might insert wording of a general nature that did not actually specify the agreed services to be provided. For example, " ... lease and manage the property ...".

To remedy this, the revision provided a comprehensive suite of management services for a landlord and agent to agree upon, including regular inspections of smoke detectors by suitably qualified contractors.

Whilst the revision was in progress, the REIV became aware of the inquest into the deaths of Chase and Tyler Robinson.

As a result, the REIV expanded the suite of management services that might be provided to include not only inspection of smoke detectors but also swimming pool safety barriers and electrical, gas, and plumbing fixtures and fittings. In so far as the Robinson inquest is concerned, it should be noted a gas heater provided by a landlord is fixture.

It is a matter of negotiation between a managing agent and a landlord as to which, if any, of the services set out in the authority to are to be provided or whether a suite of services provided by the agent will be annexed to and form part of the authority, instead. For completeness, it should also be pointed out a landlord may negotiate a variation to the services set out in the authority.

A copy of the relevant parts of the copyright authority is included with this letter. You will note the inspection periods vary from 6 to 12 months and, if no inspection period is chosen or a choice is overlooked, the choice defaults to a 12 monthly inspection.

You will also notice a landlord choosing all or some of the periodic inspection services set out in the authority provides the agent with a limited power of attorney. Its purpose it is to provide the agent with a proper, legal basis to engage appropriate contractors to perform the periodic inspections in the name of the landlord.

The printed version of the authority became available since August 2013. An electronic version came into use in November, on completion of development and testing.

REIV Residential Tenancy Agreement

At present the REIV does not have plans to incorporate a requirement for inspections and/or alterations on the part of landlords in its form of residential tenancy agreement, in relation to gas heaters.

This is because the *Residential Tenancies Act 1997*, section 68, obliges a landlord to maintain rented premises in good repair.

The section 68 obligation extends to fixtures and fittings provided by a landlord, for example a gas heater and will also oblige a landlord to deal with "...negative pressures created by exhaust fans ...".

The statutory obligation is a strict one. It makes no allowance for a gas heater being in less than "good repair". If it is not – or ceases to be in anything other than "good repair" – a landlord has an on-going statutory obligation to put it into that state of repair.

So far as "negative pressures" are concerned, the "good repair" obligation" will require a landlord to ensure CO is not being emitted. It is obvious that if there is an emission, the "good repair" obligation is not being observed.

Training and information

The current version of the REIV's copyright residential leasing and managing authority is included in the materials provided to persons undertaking the course for agent's representatives and also in the relevant units in the Certificate IV Property Services.

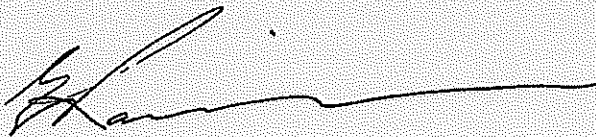
The very detailed requirements as to the agents' level of service is useful for generating class discussions about a managing agent's role in communicating with both landlords and tenants about their responsibilities.

Furthermore, the REIV has ordered the brochure *Landlords, Agents And Tenants Your Responsibilities* (version 06/2011) published by Energy Safe Victoria to give to all agent's representative and Certificate IV Property Services students undertaking studies at the REIV.

The REIV's property management *Knowledge Networks* is a forum for discussion of current issues affecting property managers at which issues – such as those arising out of the Robinson inquest – can be aired.

If there are changes to laws affecting the management of residential real estate – for example as mooted in the private member *Residential Tenancies Amendment (Housing Standards) Bill 2013* – the REIV will conduct update training for residential property managers to acquaint them with new requirements.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Enzo Raimondo', written over a horizontal line.

Enzo Raimondo
Chief Executive Officer

Encls: x2

Level of Service

"The Client agrees with the Agent the services to be provided by the Agent in relation to the Property are:

*As attached / *as set out below

(*Place 'x' in box to indicate choice. If choice is 'As attached' attach details to each part of this Authority, before signing)

Letting services -

[Place 'x' in box(s) for agreed service(s)]

- Provide estimate of potential rental income.
- Provide marketing/advertising recommendations.
- Recommend ways to maximise the property's appeal to prospective tenants.
- Arrange preparation/display of "For Lease" boards/advertising, including website(s).
- Promote property to agent's data base for prospective tenants.
- Provide regular reports on prospective tenant interest.
- Conduct property inspections with prospective tenants.
- Check prospective tenant applications, incl. tenant database checks.
- Submit tenant offers & recommendations.
- Prepare property condition reports at start of lease.
- Take pictures and/or video of property & include with condition report together with a sketch indicating location of smoke alarms within the residence.
- Prepare lease & arrange signing by landlord/agent & tenant.
- Other service(s) (Agent to complete):

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Property management services -

[Place 'x' in box(s) for agreed service(s)]

- Monitor, collect, & account for rent.
- Lodge bond/bond claim with RTB Authority at beginning / end of tenancy.
- Carry out *periodic visual property inspection & report.
- Arrange (as Client's agent) for appropriate contractor(s) to carry out *periodic inspection of plumbing fixtures and fittings.
- Arrange (as Client's agent) for appropriate contractor(s) to carry out *periodic inspection of electrical fixtures and fittings.
- Arrange (as Client's agent) for appropriate contractor(s) to carry out *periodic inspection of gas fixtures and fittings.
- Arrange (as Client's agent) for an appropriate contractor(s) to carry out *periodic smoke alarm inspection.
- Arrange (as Client's agent) for an appropriate contractor(s) to carry out periodic *swimming pool safety barrier (incl. associated fittings) inspection.
- Arrange property maintenance/repairs/renovations, incl. by engagement of contractors.
- Project manage (as client's agent) maintenance/renovations (above \$5,000 in value).
- Notify breaches involving non-payment of rent/significant property damage/accidents.
- Prepare & serve Residential Tenancies Act notices.
- Representation at VCAT hearings, incl. necessary preparation work.
- Engagement (as client's agent) of professional/property services providers & tradespeople.
- Monitor lease expiries & advise current rental trends.
- Conduct rent reviews & report.
- Represent client at Owners Corporation meetings (if permitted).
- Liaise with tenants to arrange prospective tenant inspections.
- Conduct final inspections at lease end including condition report & report to Client.
- Other service(s) (Agent to complete):

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Periodic property inspections

***periodic visual property inspection to be carried out by the Agent**

(This part only applies if the Agent is to carry out periodic property inspections: see 'Property management services', above)

* once every 12 months / * once every 6 months. *Indicate choice by placing 'x' in applicable box. If no choice is indicated, a periodic property inspection is to be carried out once in every 12 months.

[Note: a periodic visual property inspection carried out by the Agent does not include the moving of furniture, lifting of floor coverings, inspecting the interiors of roof spaces or under flooring or the inside of cupboards or tenants' goods or other belongings. In particular, the Agent is not qualified or able to check that plumbing, electrical or gas fixtures or fittings or smoke alarms or swimming pool safety barriers (incl. associated fittings) comply and operate in accordance with applicable codes and/or regulations. The Agent recommends the Client has these checks carried out by an appropriate contractor(s).]

***periodic plumbing inspection to be carried out by a contractor(s):**

(This part only applies if the Agent is to arrange for an appropriate contractor(s) to carry out periodic inspection: see 'Property management services', above)

* once every 12 months / * once every 6 months. *Indicate choice by placing 'x' in applicable box. If no choice is indicated, a periodic inspection of plumbing fixtures and fittings is to be carried out by an appropriate contractor(s) once in every 12 months.

***periodic electrical inspection to be carried out by a contractor(s):**

(This part only applies if the Agent is to arrange for an appropriate contractor(s) to carry out periodic inspection: see 'Property management services', above)

* once every 12 months / * once every 6 months. *Indicate choice by placing 'x' in applicable box. If no choice is indicated, a periodic inspection of electrical fixtures and fittings is to be carried out by an appropriate contractor(s) once in every 12 months.

***periodic gas inspection to be carried out by a contractor(s):**

(This part only applies if the Agent is to arrange for an appropriate contractor(s) to carry out periodic inspection: see 'Property management services', above)

* once every 12 months / * once every 6 months. *Indicate choice by placing 'x' in applicable box. If no choice is indicated, a periodic inspection of gas fixtures and fittings is to be carried out by an appropriate contractor(s) once in every 12 months.

***periodic smoke alarm inspection to be carried out by a contractor(s):**

(This part only applies if the Agent is to arrange for an appropriate contractor(s) to carry out periodic inspection: see 'Property management services', above)

* once every 12 months / * once every 6 months. *Indicate choice by placing 'x' in applicable box. If no choice is indicated, a periodic smoke alarm inspection is to be carried out by an appropriate contractor(s) once in every 12 months.

***periodic swimming pool safety barrier inspection to be carried out by a contractor(s):**

(This part only applies if the Agent is to arrange for an appropriate contractor(s) to carry out periodic inspection: see 'Property management services', above)

* once every 12 months / * once every 6 months. *Indicate choice by placing 'x' in applicable box. If no choice is indicated, a periodic swimming pool safety barrier (incl. associated fittings) inspection is to be carried out by an appropriate contractor(s) once in every 12 months.

Meaning of 'appropriate contractor'

'Appropriate contractor' is a contractor who possesses appropriate knowledge, experience, skill and qualifications (if required) to:

- check plumbing/electrical/gas fixtures and fittings conform to and operate in a manner which complies with applicable codes and regulations;
- check a smoke alarm conforms to and operates in accordance with the appropriate Australian Standard(s);
- check a swimming pool safety barrier (incl. associated fittings) conforms to and operates in a manner that complies with applicable codes and regulations.

Property management accounting services –

(Place 'X' in box(s) for agreed services)

- Prepare monthly statement of rent collected & outgoings paid.
- Payment of utilities/rates/land tax/owners corporation fees, if requested.
- Payment of valuers/architects/engineers/trades/contractors/professionals invoices, if requested.
- Prepare end of financial year reports.
- Other service(s) (Agent to complete):

Limited power of attorney: engagement of appropriate contractor(s)

(This part only applies if the Agent is to arrange for periodic inspection of plumbing and/or electrical and/or gas and/or smoke alarms and/or swimming pool safety barriers: see 'Property management services', above)

This power of attorney commences on the date of this Authority and continues while the Agent manages the Property. It will be revoked at 5:00 pm on the day the Agent ceases to manage the Property, no notice of revocation is required.

The Client appoints the officer in effective control from time to time of the Agent and / or the estate agent/agent's representative of the Agent who manages the Property from time to time as the Client's attorney under power to engage as required an appropriate contractor(s) to carry out periodic plumbing and/or electrical and/or gas fixtures and fittings inspection and/or smoke alarm inspection and testing and/or swimming pool safety barrier (incl. associated fittings) compliance and operation for the Client.

The Client will pay or reimburse on demand the Agent for any expense reasonably incurred or incurable by the Agent in acting as the Client's attorney under power.

The Client will promptly ratify and confirm this power of attorney, on being requested to do so.

Client authority to provide contact details to the contractor(s)

The Client authorises the Agent to provide the Client's name, address and other contact details to the contractor(s) who are engaged by the Agent to carry out periodic plumbing and/or electrical and /or gas and/or smoke alarm and/or swimming pool safety barrier inspections. This authorisation continues, even though the Agent has ceased to manage the Property.

BEWARE CARBON MONOXIDE IT'S A SILENT KILLER

You can't see it and you can't smell it, but if you have a gas heater in your home then you're at risk of carbon monoxide poisoning.

Carbon monoxide (CO) can be produced by faulty, un serviced gas heaters but it is easy to avoid. All gas heaters should be serviced at least every two years to reduce the risk.

Nine Victorians have died from this silent killer since 2000 and hundreds more have been admitted to hospitals with CO poisoning. The symptoms are often mistaken for the flu and include headaches, dizziness or nausea.

A good air supply and a well-maintained flue are essential to ensure gas appliances operate correctly. Instantaneous gas water heaters, other than room-sealed types, in a bathroom or toilet are not permitted and should be replaced.

Landlords should ensure gas heaters are serviced at least every two years and reported faults should be checked as a matter of urgency.



LANDLORDS, AGENTS AND TENANTS YOUR RESPONSIBILITIES

TO
LET



Energy Safe Victoria
Phone 1800 800 158
Web www.esv.vic.gov.au
Further information on the responsibilities of landlords and tenants, and the Residential Tenancies Act can be found at www.consumer.vic.gov.au

Published by Energy Safe Victoria
(Version 06/2011)

LANDLORDS AND AGENTS YOUR RESPONSIBILITIES

Landlords and agents share responsibility for ensuring gas and electricity supply and appliances are safe in rented premises.

The Residential Tenancies Act 1997 requires a landlord to ensure that rented accommodation is maintained in "good repair". This includes all gas and electrical appliances provided by the landlord, which must be safe to use and properly maintained.

Failure to ensure gas and electric appliances are properly installed or correctly maintained according to the manufacturer's instructions could not only potentially kill or harm the tenants, but could cause significant property damage and expose the landlord to civil liability and potentially costly litigation. There might also be unintended impacts on the landlord's insurance if injury or damage is found to have been caused by poorly serviced or unsafe appliances.

The landlord and agent should ensure safety checks are done at rented premises at agreed intervals, which ESV recommends should be once every two years.

Managing agents could have legal exposures if they do not proactively warn landlords of the possible consequences of inadequate maintenance.

Energy Safe Victoria recommends that space heaters and water heaters be serviced every two years, while cookers should be maintained as needed.

It is illegal and dangerous for unqualified people to perform electrical or gas work around the home.

A registered electrical contractor must be engaged to carry out electrical work around your property. Ensure the electrician has a licence issued by Energy Safe Victoria. A Certificate of Electrical Safety must be issued when the work is complete.

If the electrician refuses to show their licence or issue a Certificate of Electrical Safety, notify Energy Safe Victoria on 1800 800 158.

Gas appliances can only be repaired, serviced or installed by tradespeople authorised by the Plumbing Industry Commission (PIC).

Not all plumbers are authorised to do gas installation or servicing work. You can check by phoning the PIC on 03 9889 2211.

The landlord's responsibilities

- Ensure only licensed people do all gasfitting and electrical work.
- Before re-letting, ensure all appliances are safe and any unsafe appliance is repaired or removed.
- Ensure electrical appliances are cleaned regularly in accordance with the manufacturer's instructions. Particular attention should be paid to dust build-up on cooling fan inlets and all parts of heaters.
- Check electrical appliances for damage to plugs, leads and casings that may expose live parts or cause a fire.
- Ensure electrical wiring, socket outlets and switches are maintained in a safe condition.
- Ensure all gas appliances, pipework and flue systems are maintained in a safe condition.
- Ensure all ventilation openings are clear and unobstructed.
- Ensure all pipes are sealed correctly if an appliance has been removed.
- Record all safety checks and details of work carried out on a gas or electrical installation.
- Flue systems must be examined regularly, especially those related to decorative gas log fires, internal hot water heaters and space heaters. Flue terminals must be checked to ensure they are not blocked and are vermin-proof.
- Burning or discolouration on the front or above a space or water heater indicates a problem and must be checked immediately.
- Air vents must not be blocked or covered.
- Piping systems should be checked every five years or whenever a new or replacement appliance is installed. Galvanised steel installations should be checked more frequently.

TENANTS YOUR RESPONSIBILITIES

Tenants are responsible for using appliances according to instructions and should immediately report any faults to the landlord or agent.

- Use appliances appropriately.
- Allow reasonable access for the landlord's contractor to carry out gas and electricity safety checks.
- Report any fault or malfunction to the landlord or agent.
- Stop using any appliance that is obviously faulty.
- Do not illegally install, remove or tamper with any gas or electrical appliance.
- Do not use damaged appliances – they can cause fires and injuries.
- Do not use multiple or cascaded power boards as a substitute for permanent socket outlets.
- Ensure that portable heaters are kept away from combustible materials including washing, paper, blankets and curtains.
- When replacing electrical fuses or fuse wire, use the specified rating only. Oversized fuses may cause the fixed wiring to fail resulting in electric shock or fire.

