

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
RESIDENTIAL TENANCIES LIST
REGISTER OF PROCEEDINGS**

APPLICANT(S):
Part 4a Site Tenant Karen Dowling

RESPONDENT(S):
Owner Lifestyle Management 2 Pty Ltd

RENTED PREMISES: 15/65 Brighton Avenue, WOLLERT 3750

Application under *Residential Tenancies Act 1997 general dispute Section 452*

REMARKS

- A. On 7 July 2025, I delivered my reasons (*Dowling v Lifestyle Management 2 Pty Ltd* (Residential Tenancies) [2025] VCAT 590) in proceedings R2024/8956, R2024/9215, R2024/15903, R2024/15972 ('Wollert proceedings') and R2024/312 ('Chelsea Heights proceeding').
- B. Following the hearing, I invited the parties to file submissions and proposed forms of orders to give effect to my reasons. The parties were encouraged to file consent orders where they could reach agreement.
- C. Ms Jones-Leitch provided submissions and proposed orders on behalf of Mrs Jones in the Chelsea Heights proceeding on 17 July 2025. Following multiple extensions, the respondents provided their submissions and proposed orders in respect of all proceedings on 24 July 2025.
- D. The applicants in the Wollert proceedings filed their submissions and proposed orders later in the day on 24 July 2025 but did not provide them promptly enough for me to take them into proper consideration. The applicants will have the opportunity to raise relevant issue or make further submissions at the hearing I have scheduled for 27 August 2025.
- E. The orders I make below largely rely on the proposed orders filed by the respondents, with some modifications. The orders in the Wollert proceedings are tailored to reflect the separate agreements that apply in each proceeding, however otherwise have the same effect. The orders in the Chelsea Heights proceeding are separate.

ORDERS

1. The answers to the preliminary questions (noting that only the second and third questions below arise in the Chelsea Heights proceeding) identified in my orders dated 23 April 2025 are:
- (a) Question: Do any of the terms for payment of the deferred management fee (DMF) in the Residential Site Agreement (RSA) breach s 206ZZG(1) of the *Residential Tenancies Act 1997* (Vic) (RTA)?
- Answer: No.
- (b) Question: If yes, are those provisions (and if so which) void under s 206F(3)?
- Answer: Unnecessary to answer.
- (c) Question: Do any of the terms for payment of the DMF in the RSA breach s 206S(1)(b) or (c) (or both)?
- Answer: The terms for the payment of the DMF in the RSA breach s 206S(1)(b), but do not breach s 206S(1)(c).
- (d) Question: If yes, are those terms (and if so which) void under s 206F(3) or should VCAT declare that the respondent (LM2) must not require payment of the DMF as provided by s 206S(2) (or

both)?

Answer: The terms imposing the DMF in all the RSAs are void under s 206F(3) and VCAT should declare pursuant to s 206S(2) that LM2 must not require payment of the DMF.

- (e) Question: Having regard to the terms of the RSA alone, should the Tribunal under s 206G declare to be invalid or vary the provisions of the RSA that allow LM2 to charge rent and other charges after the death of a resident but prohibit the use of the home until it is sold?

Answer: VCAT should under s 206G vary the provisions of the RSA so the home can be used after the death of a resident with the consent of LM2, which consent should not be unreasonably withheld.

2. The Tribunal declares and orders that:

- (a) the terms of the Residential Site Agreement of Karen Dowling dated 8 April 2020 ('Dowling RSA') which require payment of the DMF do not comply with s 206S(1)(b) of the RTA and by reason thereof are void pursuant to s 206F(3)(a) of the RTA; and
- (b) pursuant to s 206S(2), LM2 must not require payment of the DMF.

3. To give effect to order 2, pursuant to sections 130(1) and 130(2)(e) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ('VCAT Act') and section 472(1)(g) of the RTA, the Tribunal declares and orders that the terms of the Dowling RSA are struck through or varied as set out in Annexure A attached to the respondent's minute of proposed orders for this proceeding filed on 24 July 2025.

4. Notwithstanding the answer to the preliminary question at 1(e) of these orders, by consent the Tribunal orders that pursuant to section 206G(2)(a) of the RTA, the terms of the Dowling RSA are varied as set out in Annexure A attached to the respondent's minute of proposed orders for this proceeding filed on 24 July 2025.

5. Pursuant to section 118 of the VCAT Act, the operation of order 2(a) and 3 of these Orders are stayed temporarily pending the determination of the stay application described in order 6(a) below (save for those aspects of order 2 which vary clause 9 of the RSA).

6. **By 30 July 2025:**

- (a) the parties must file and exchange affidavits in support or in opposition to an application by the respondent pursuant to s 149(1) of the VCAT Act, to stay the operation of order 2 and 3 of these Orders pending the determination of any appeal instituted by the respondent; and
- (b) the Wollert applicants must file and serve any affidavit in respect of an application for costs pursuant to s 109(2) of the VCAT Act,

(collectively, the 'Applications').

7. **By 6 August 2025**, the respondents must provide written submissions in respect of the Applications (limited to 20 A4 pages).

8. **By 13 August 2025**, the Wollert proceeding applicants must provide written submissions in reply (limited to 20 A4 pages).

9. **The Applications (and any application made in the Chelsea Heights proceeding) are jointly scheduled for hearing at 10:00am on 27 August 2025 to be heard via Zoom before Justice Woodward for an estimated duration of half a day.**



Justice Ted Woodward, President

