

# Using Discretion When Evicting Social Housing Tenants

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## Introduction

Social workers employed on the frontline of the housing and homelessness sectors commonly need to work with limited time and resources, and are faced with human situations that defy programmatic responses. Accordingly, they are required to respond to challenging situations with discretion, managing each case in the way they believe is most appropriate for that individual, and managing their caseloads in a way that allows them to retain a sense of job satisfaction and personal fulfilment.<sup>1</sup>

Social workers use their discretion to allocate services and dispense resources among different households at varying risks of homelessness. From initial assessment and planning to placement in housing, from supporting struggling tenancies to taking action against tenancy breaches, social workers are involved in decision-making processes that require them to balance their responsibility to prevent homelessness against their personal assessments of how limited assets should be distributed.

This article will present some preliminary findings of a doctoral study that investigated how workers at a large social housing provider in Victoria experienced the process of evicting (and not evicting) their tenants. The study conducted semi-structured, in-depth interviews with 14 housing workers (11 frontline staff and three managers) about their practice of eviction, including the processes they followed, the decisions they made, and the conflicts they navigated. This paper uses material gathered from the frontline staff, whose experiences of using discretion to moderate housing and homelessness

outcomes are highly relevant to social workers in the sector and the profession as a whole.

The workers discussed how and why they use their personal discretion during eviction processes to sustain tenancies and avoid homelessness, or conversely to pursue eviction despite knowing the outcome would be homelessness. They described having a relatively high level of discretion allowing them to interpret the social housing provider's policies on eviction and make their own decisions to initiate, pursue, pause, and abandon tenancy actions. They placed importance on applying policies consistently but also used discretion to respond to the individual circumstances of each case, including their own interpersonal relationships and opinions. Although the project is early in its analysis stage, four patterns are emerging.

### 1. Using discretion in response to tenant 'effort'

First, the housing workers' use of discretion was influenced by their perceptions of tenant effort. Many of the workers saw themselves as being in reciprocal relationships with tenants and wanted the effort they felt they were putting in to sustain a tenancy to be matched by effort on the tenant's part. When workers perceived certain tenants were not making the effort to sustain their own tenancies, they described being less inclined to intervene on their behalf. Some described proceeding to each stage of the eviction process in direct response to lack of tenant effort and engagement.

One worker described going above and beyond to make the case to management that a tenant should not be evicted. Their rationale for this use of discretion was that the tenant

was engaging with the process: responding to contact, making small additional rental payments, and agreeing to be connected to support services. Management agreed to hold off on pursuing the eviction, and the worker reported the tenant was now successfully paying off their arrears. By contrast, the same worker described feeling let down when a tenant did not attend their Victorian Civil and Administrative Tribunal (VCAT) appeal hearing, resulting in the worker setting the possession hearing quickly afterwards. They were granted possession and purchased a warrant for the tenant's eviction.

Another worker described how, over a short period of time, three tenants in the same building smashed the sliding doors in their units. In two of those cases, the worker applied for eviction, but in one they did not because the tenant rang them, reported the damage, and offered to pay for it. The worker agreed that this gesture influenced their decision-making process to allow the tenant the opportunity to rectify the situation.

### 2. Using discretion when there is a personal relationship with the tenant

The second pattern emerging from the analysis is that over time, housing workers can develop relationships with tenants that provoke the use of discretion. Participants described a range of circumstances where their rapport or relationship with the tenant enabled them to intervene to avoid an eviction outcome. After getting repeated complaints from neighbours about a tenant they knew well, one worker felt it seemed out of character and made the effort to visit the property in person multiple times and speak to the individual away from the property. After coming to

understand that the tenant was facing intimidation from another individual in the neighbourhood, they moved them into a different property rather than pursue action.

Another worker described how a good relationship with a tenant was key to sustaining a tenancy. Because they regularly spoke to the tenant, they had developed a style of communication that they knew would elicit a positive response, and could explain things more clearly. They felt that the tenant had paid off a substantial amount of arrears and avoided eviction as a result. This worker was clearly fond of the tenant and had attained a great deal of personal and professional satisfaction from using discretion to help him sustain his tenancy.

The failure to build a strong relationship between tenant and housing worker could make a tenant more susceptible to an eviction process. One worker stated that the decision to evict was easier if they did not feel they were building a relationship with a particular tenant. A tenant's lack of relationships with other support workers could also put them in danger of eviction. For example, when describing a conflict with a tenant's support workers who were urging a housing worker to evict the tenant, the worker explained the support agency regularly asked the housing provider to evict tenants they found difficult, while advocating for their 'favourite' tenants. The housing worker's own use of discretion was thus complicated by the use of discretion in other support systems.

### 3. Using discretion in response to neighbourhood disruption

Thirdly, the use of discretion was sometimes prompted by considerations about the broader 'neighbourhood' within the property. The impact of tenancy breaches on neighbours and on the overall functioning of the property as a community was considered closely by housing workers deciding when to use their discretion to intervene. Multiple participants described balancing their duty of care to a tenant facing eviction action against their duty of care to the other residents of the property.



For one worker, the impact on the neighbourhood was the primary concern when deciding whether to push harder for an eviction. In buildings where it was felt the disruption or damage to the neighbours was severe, the worker said they pushed harder to speed up the eviction process. When asked to identify the most important difference between two stories about eviction actions, one which ended in eviction and one that did not, another worker said the impact on neighbours was key.

While the housing workers overwhelmingly expressed care and sympathy for neighbours whose peace or safety was threatened by anti-social neighbours, this was not the only reason they used their discretion. Many of the workers mentioned that neighbours would organise themselves to put pressure on them to initiate or speed up eviction processes. Constant complaints from neighbours impacted the workers' sense of personal fulfilment in the role and could be a crucial consideration in deciding how strongly to act.

However, pressure from neighbours did not always straightforwardly mean that workers would push harder for eviction. Many related that they found it difficult to persuade neighbours to provide evidence or testify at the Victorian Civil and Administrative Tribunal (VCAT) against someone to whom they lived in close proximity. For some, this was a frustrating and

challenging circumstance to navigate and in response, they retreated back from using discretion towards the formal steps of the policy.

### 4. Using discretion when the issue is arrears

The final noteworthy early finding is that some housing workers reported being more likely to exercise discretion on behalf of tenants when the tenancy was at risk because of rental arrears. Many interviewees expressed discomfort about evicting tenants because of arrears. While they recognised that payment of rent was necessary for the social housing provider to stay solvent, they saw eviction as a poor solution given that it rarely recouped the money owed. There was also a common feeling that social housing tenants would struggle to pay rent by definition and so should not be punished when they were unable to do so.

Multiple workers spoke of tenants currently in arrears whose evictions they were intentionally not pursuing, despite instruction from management to evict. One said they always felt it was more important to exert effort towards tenancy support rather than the administratively burdensome process of taking tenancy action. Another was actively slowing down the process to protect a tenant who was more than a year in arrears because they did not believe that was sufficient reason to evict.

### Conclusion

Social workers who go into the housing and homelessness sector use discretion on a daily basis, which can significantly affect outcomes for tenants in both positive and negative ways. Investigating how and why workers in the sector use their discretion contributes to a more thorough understanding of social work practice both within, and external to, the sector. These early findings suggest there are a number of contexts in which housing and homelessness workers will intervene to prevent or accelerate an outcome. This has ramifications for social work policy, research, and practice in the sector.

### Endnote

1. Lipsky M 2010 [1980], *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (30th Anniversary ed.), Russell Sage Foundation, New York.