



TENANTS' UNION OF TASMANIA SUBMISSION

Inquiry into Housing Affordability in Tasmania
Legislative Council Select Committee
August 2007

Outline of the Role of the Tenants' Union of Tasmania

The Tenants' Union of Tasmania Inc. (TUT) is a Community Legal Centre largely funded by the Tasmanian Department of Health and Human Services and the Commonwealth Attorney-General Department.

The TUT works to protect the interests and rights of tenants and:

- Seeks to improve conditions in rental housing in Tasmania so that accommodation meets acceptable community standards;
- Raises awareness within the community about tenancy issues; and
- Promotes legislative change to improve conditions for tenants.

The TUT has extensive contact with tenants through its Telephone Advice Line, Drop-In Service and Legal Representation and therefore has intimate knowledge of situations confronting tenants in Tasmania.

The TUT also acts as a representative body for tenants and because of this, along with time constraints and the expected submissions from various bodies with expertise in housing stress and associated poverty, this submission will focus on the Committee's Terms of Reference (1), (2) and (6).

Introduction

Housing affordability has been near the forefront of the Tasmanian and Australian political agenda since the housing boom began at the start of the 21st Century. However, this has been coupled with concern about the economy in general and interest rates in particular, which has shaped perceptions in mainstream society that housing affordability is an issue affecting families with mortgages. From the TUT's perspective, among the hardest hit by the lack of affordability are tenants in the private rental market. Recent Census data confirms this¹. Changing levels of housing cost and ownership have resulted in lower vacancy levels and significantly higher rents in most regions of Tasmania. Secondary effects of the rise of housing costs felt by tenants include reduced long-term security of tenure, substandard housing and, at worst, homelessness.

¹ Hobart *Mercury*, 29 August 2007, p.1-2 and Australian Bureau of Statistics, 2006 Census of Population and Housing, cat no. 2003.0



Position of the Tenants' Union on Housing Affordability in Tasmania

(1) The experiences of Tasmanians in housing stress and in homelessness.

Underinvestment in Housing Stock

The right to shelter is a basic need and increasingly government policy has been to turn to private investors to supply the stock of housing. The TUT has seen exorbitant rises in rent across all regions in the State since the 'housing boom' began around the turn of the millennium. Rent has risen far in excess of the Consumer Price Index (CPI) and income and has resulted in greater levels of housing stress and housing crisis for private renters².

The TUT believes that despite ameliorative measures being taken to decrease housing stress, or crises, market based solutions to housing have thus far been demonstrated to be incompatible with the provision of this most basic need. Increased regulation, to bolster tenants' rights in the private market, are often at odds with policies designed to increase the attraction of real estate investment. Strategies such as Commonwealth Rent Assistance may even have an inflationary effect on rents. The TUT urges Commonwealth and Tasmanian Governments to prioritise direct investment in public housing that is integrated into existing cities, towns and rural communities. A broad base and increased eligibility for public tenants would have the benefits of:

- encouraging a more textured public tenant community;
- Tenants on higher incomes, by paying near market rent, would decrease the costs associated with subsidising other tenants;
- The existing policies of minimum standards of accommodation in public housing would encourage minimum standards across the market place;
- If a significant proportion of housing was controlled by the public there would be competition in the rental market, and rents could reduce throughout.

Recommendation A: The Commonwealth and Tasmanian Governments prioritise direct investment in public housing stock.

Rent Increases

The TUT has been dealing with more mid-lease rent increases from clients on its telephone advice line and face-to-face advocacy. If there is provision for a rent increase in the lease agreement, the landlord may increase rents every 6 months during the tenancy period. A tenant may challenge a rent increase that is excessive. The application fee to the Magistrates Court is \$42.35. The issue the court is directed to have regard to is the 'general level of rents'. Evidence of the market rent for the premises in question may cost a tenant between \$300-\$500 (for a professional evaluation), which is not recoverable, even in the event of a successful application.

² Australian Bureau of Statistics, 2006 Census of Population and Housing, cat no. 2003.0



The Tenants Union has recorded many extreme rent increases demanded from tenants. Examples include a 150% rise from \$100 to \$250 per week in Devonport and a \$100 rise from \$180 to \$280 per week in Hobart.

Under the *Residential Tenancy Act (1997)* s.23:

- (1) A tenant may apply to the Court for an order declaring that an increase in the rent payable under a residential tenancy agreement is unreasonable.
- (2) In determining whether an increase in the rent is unreasonable, the Court is to have regard to –
 - (a) the general level of rents for comparable residential premises in the locality or a similar locality; and
 - (b) any other relevant matter.

In effect, any rent increase may be granted and housing affordability is not taken into consideration when determining rent increases. Therefore a household could move from a manageable level of rent, through the 'housing stress' level into 'housing crisis' during a tenancy, even without changes in their income.

Property owners are in the advantageous position of knowing that the costs and inconveniences associated with uprooting a household are high, and many tenants will not challenge the rise through the court process. Tenants do not have a right to break the lease as a result of the rent increase unless they are willing to face costs of finding new tenants and paying rent until new tenants are found.

Case study

Joan* is a pensioner, living with her pensioner husband and pensioner mother. They moved into a three bedroom house in Devonport with a friend of the family as landlord and the rent was set at \$432 per calendar month³ or \$100 per week. They paid no bond and had no written lease, which made it difficult to obtain Centrelink Rent Assistance.

After eight months the landlord notified the tenants that the rent was to be raised to \$1083 per calendar month or \$250 per week. The TUT advised the tenants that they could apply to the Magistrates Court to see whether this was reasonable, but there was no certainty of a reduction due to the increase in local market rents.

They decided it was too hard to fight it and moved out into \$210 per week accommodation where at least they can receive some Rent Assistance because they now have a 12 month written lease. There were considerable relocation costs, and Joan's mother, who is blind, has had to familiarise herself with another house. They do not know if a further lease will be available after the current lease expires. It is very expensive for them and they have applied for public housing in the hope of eventually having affordable secure housing.

For more information on rent increases in Tasmania, including three further case studies, see the 2006 TUT report *Through The Roof*, which can be found in Appendix A in this submission.

³ In Tasmania the legal maximum period of rent in advance is 4 weeks.



Lease Termination

The TUT regularly comes face-to-face with homelessness from its clients due to the inequities of sections of the *Residential Tenancy Act 1997*. Under the Act any lease terminations that are instigated by the landlord require a minimum of either only 14 or 28 days notice be given before a tenant must leave the premises. Low vacancy rates, increasing rents and high security deposits (bonds) along with short notice means that many tenants and their families find it difficult to find alternative accommodation. When coupled with finding accommodation near schools, places of employment and convenient services, termination of a lease at short notice can be an extremely difficult life event. In some cases homelessness results.

The Act gives no consideration to the tenant's potential for finding suitable alternative accommodation, treating the lease as a general contract rather than one that is for the provision of a basic human right. This can mean that tenants, through no fault of their own, can find themselves on the streets in two or four weeks without recourse to the Law.

Sections 42 and 43 of the *Residential Tenancy Act 1997* sets out when a notice to vacate can be given by the owner and the length of notice required:

(1) An owner of residential premises may serve on a tenant of the premises a notice requiring the tenant to deliver vacant possession of the premises to the owner for any of the following reasons:

- (a) that the tenant has failed to comply with any provision of the residential tenancy agreement [14 days notice];
- (b) that a residential tenancy agreement expired less than 28 days before the service of the notice [14 days notice];
- (c) that the residential tenancy agreement is not for a fixed period and the premises are to be sold, renovated or used for another purpose [28 days notice];
- (d) that a residential tenancy agreement is due to expire not more than 28 days after service of the notice [14 to 28 days notice];
- (e) that an order has been made under section 86 of the Land Titles Act 1980 for foreclosure of the premises [28 days notice];
- (f) that the premises are to be sold pursuant to section 78 of the Land Titles Act 1980 [28 days notice];
- (g) that the tenant has caused nuisance at the premises that is substantial [14 days notice].

Case Study

John* has lived in a Southern Tasmanian rural rental property for the past ten years on a non-fixed lease with his partner and five children aged between 1 and 15. He is on a Disability Pension and his partner is on a Parenting Pension. They are very good tenants helping with repairs and maintenance over the ten years whilst the landlord has done little to the property.

After ten years, the landlord gives them two Notices to Vacate which are invalid and a third that states the property is to be sold and that they have 28 days to leave. They have a solid footing in the community with social networks and children in school and so they do not wish to leave the area. Being a rural region, alternative accommodation is difficult to find. In addition, John and his family receive help with their bond from Colony 47 but landlords in the area discriminate against potential tenants by not accepting bond assistance. Without Court intervention they may be homeless.



High rents also make it difficult for some tenants to keep up-to-date with their payments. If a tenant falls behind in rent by as little as one day, three times in twelve months and is served notice on each of these occasions then they can be evicted under Section 43(2) of the *Residential Tenancy Act 1997*:

A notice to vacate on the ground of failure to pay rent is of no effect if a tenant pays all arrears in rent before that notice takes effect unless 2 or more notices to vacate on that ground have been served on the tenant during the immediately preceding 12 months.

Again, the eviction, which only requires two weeks notice, may lead to homelessness.

(2) The impact of lack of affordable housing on the broader economic and social wellbeing of the Tasmanian community.

Substandard Housing

Tenants regularly seek advice from the TUT in relation to accommodation that is unhealthy, unsanitary, dangerous, inadequate, inefficient, dark and unsecure. Currently the problem is acute with the shortage of housing combined with high rents meaning that there is less incentive for landlords to maintain houses at a standard acceptable to the Tasmanian community. People are desperate for accommodation and would prefer substandard and/or expensive housing to none at all.

Exacerbating the situation is the increase in property investors looking for maximum returns on investment and interstate landlords who may not have even seen the property and do not understand the human impact of the lack of repairs.

Case Study

Tina* is a single parent with a 3 year old and a 6 month old child in the Brighton area. She pays \$200.00 per week rent, which is affordable for her currently. Tina sought advice from the TUT in relation to general repairs to the house, which is in very poor condition, and in relation specifically with her septic tank, which has leaked into her yard. She had approached the property owner several weeks ago, but he had refused to remedy the problem. The advice we gave Tina was that most of the problems with the house existed prior to her tenancy, and the Act only requires that a property is repaired in accordance with the condition at the start of the tenancy. The septic tank issue could be tackled in the following ways: (1) Tina could seek an order from the Magistrates Court that the septic tank be repaired. She would need to pay an application fee, provide proof of the problem, and argue that the property owner is liable to repair it; (2) she could pay for the repair to be completed herself, and seek reimbursement from the owner (which may lead to an application in Court); or (3) she could terminate the lease. Tina told the TUT that she did not have any money up-front to pay for the repairs. She said that she did not have anywhere else to go, should she terminate the lease, and she said that she was afraid of the Court process. Although she said that her youngest child had been quite ill, and she suspected that the septic tank was the cause of the problem, she would try and handle it herself. The TUT did not hear further from Tina.



The *Residential Tenancy Act 1997* does not directly cover the issue of substandard housing, but s32(1) states:

The owner of residential premises is to maintain the premises as nearly as possible in the condition, apart from reasonable wear and tear, that existed on the day on which the residential tenancy agreement was entered into.

There is no direction given in the Act about the state of the premises required prior to rental. Uniquely in Australian tenancy law, the Tasmanian *Act* allows the owner to let premises deteriorate (within the meaning of 'reasonable wear and tear') throughout the tenancy: there is no requirement for general maintenance to keep the premises to the standard originally leased.

Under the *Substandard Housing Control Act 1973*, the Director of Housing may reduce the rent of a substandard property until it is brought up to standard. The TUT understands that this *Act* is presently under review and although it does not set minimum or acceptable standards of housing, it may be useful in extreme circumstances.

(6) Successful strategies in other Australian States that could be effective in improving affordability.

Rent Increases

As stated earlier, the TUT published a law reform issues paper in 2006 called *Through the Roof*. It included detailed comparisons of State and International legislation relating to rent increases.

To summarise the paper, Tasmania has some of the most inequitable legislation in this area in Australia. All other jurisdictions have varying degrees of comprehensiveness and ability to deliver just outcomes. The ACT uses the Housing Consumer Price Index plus 20% to give a basic benchmark of an acceptable rent increase, and most jurisdictions have many explicit factors that are considered in determining whether a rent increase was reasonable or not.

The TUT recommends the following with regard to rent increases:

Recommendation B: Rents may only be increased by the Housing CPI during the tenancy and that only one increase may occur every twelve months and this must be stated in the residential tenancy agreement. If a landlord requires an increase in excess of the Housing CPI, then the onus is placed on the landlord to justify the excess increase.

It is reasonable for a tenant to know the approximate cost of rent throughout the tenancy when signing a lease agreement, therefore the TUT submits that a maximum Housing CPI increase is fair for both Tenant and Landlord. If there are considerable changes in circumstances, there may still be the option of seeking a rent increase through an impartial body. Landlords have a relative position of power against tenants due to the relative scarcity of housing and the essential nature of shelter, and therefore it is logical to place the onus of justification upon the landlord.



Recommendation C: A list of definite factors be determined that can be taken into consideration for rent increases (and rent decreases). A community consultation process should be undertaken to determine these factors.

A list of factors will help all parties including arbiters to determine fair rent increases (and decreases) and give greater certainty to the process.

Recommendation D: A tenant has the option of terminating the lease if the rent is increased above the Housing CPI.

In the event of a high rent increase being granted tenants should be able to seek new accommodation without the added burden of costs and possible litigation. This measure will help allow tenants to avoid being pushed into housing stress or housing crisis levels.

Lease Termination

Some sections of the *Residential Tenancy Act 1997* are the most progressive in Australia. For example, all states and territories in Australia except Tasmania allow evictions without grounds. However, several states have fairer conditions associated with evictions and the period of notice given.

The TUT believes the tenant's prospects of finding alternative accommodation should be paramount and therefore the following modifications to notice periods should be adopted.



Recommendation E:

Sect. 42(1)	Description	Present Notice	TUT Proposed Notice	TUT Justification
(a)	that the tenant has failed to comply with any provision of the residential tenancy agreement	14 days	14 days	This is a reasonable period as the tenant has an option to remedy the breach within the notice period.
(b)	that a residential tenancy agreement expired less than 28 days before the service of the notice	14 days	90 days	In the current climate, and with no prior notice, a tenant must have a reasonable opportunity to find suitable alternative accommodation.
(c)	that the residential tenancy agreement is not for a fixed period and the premises are to be sold, renovated or used for another purpose	28 days	90 days	This will allow tenants a reasonable period to find suitable alternative accommodation.
(d)	that a residential tenancy agreement is due to expire not more that 28 days after service of the notice	28 days	90 days	As above
(e)	that an order has been made under <u>section 86 of the Land Titles Act 1980</u> for foreclosure of the premises	28 days	90 days	As for 42(1)(c)
(f)	that the premises are to be sold pursuant to <u>section 78 of the Land Titles Act 1980</u>	28 days	90 days	As for 42(1)(c)
(g)	that the tenant has caused nuisance at the premises that is substantial	14 days	14 days	

Recommendation F: In the event of a tenant falling behind in rent (rent arrears), a negotiated repayment plan must be attempted prior to eviction.

The paramount consideration in housing disputes should be the prevention of homelessness and social dislocation. Where reasonable progress towards repayment of debts are being made, leases should not be terminated.



Substandard Housing

In Queensland, the Landlord must provide and maintain the premises in **good repair** throughout the tenancy. In all other jurisdictions in Australia except Tasmania, the Landlord must provide and maintain the premises in a **reasonable state of repair** throughout the tenancy.

Recommendation G: The *Residential Tenancy Act 1997* states that landlords **maintain** their properties in **good repair**, rather than the condition that they were in at the beginning of the lease.

Recommendation H: A Housing Standards code be developed in consultation with interested parties covering health, heating, insulation, plumbing, security and other relevant subjects. This code would be incorporated into the *Residential Tenancy Act 1997* and included as a term in tenancy agreements.

Conclusion

Housing is recognised internationally as a basic human right. It is an essential human need, and access to many other rights, and participation in the community depend on it. Australia, and Tasmania are currently experiencing a crisis of housing affordability. Although much discussion has focused on the purchase of property, according to the recent census over 20% of Tasmanians rent their home, and over 35% are experiencing housing stress, or crisis.⁴ Many measures taken, or proposed, to combat this have an inflationary effect.

The Tenants Union of Tasmania submits that further investment in public housing be a priority in government spending.

If Governments are going to continue to look to private investment to solve housing access issues in our communities, much stronger regulation of the private rental market is required, including regulation of minimum standards. As long as market forces drive housing availability, tenants will always be in a weaker position for bargaining individual accommodation conditions against property owners.

The Tenants' Union of Tasmania urges the Tasmanian Parliament to adopt the recommendations in this submission, and where community consultation is required, the TUT is ready to be an active participant in the democratic process.

⁴ Australian Bureau of Statistics, 2006 Census of Population and Housing, cat no. 2003.0