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News from the Tenants' Union of Tasmania

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TUT Updates

It is less than a fortnight to the state election, and policies to improve the fairness, conditions and security of tenure for renters in Tasmania are still to be heard of. Hobart's rental crisis, manifesting in an extremely low vacancy rate, sky high rent increases and a growing number of people without a home to their name has so far been a side issue in the parties' campaigns for elected office. In this edition of *Rent Rant* we reiterate the policies we believe will lead to the greatest improvements in tenant rights.

We are pleased to have received additional funding from the Solicitors' Guarantee Fund (SGF). Our first 2018 SGF project has already been rolled out, namely a duty solicitor service in the Launceston Magistrates Court. Read about other projects funded through SGF in *New projects thanks to SGF grant* and find out when our solicitor's head North in the *Upcoming Dates* section.

We have recently updated our *Don't Panic – A tenants' guide to renting in Tasmania* booklets and are now distributing the 4th edition 2018. Pick up your copy from our 166 Macquarie St office in Hobart, the Launceston Community Legal Centre or email julia_ely@clc.net.au.

And as usual, we have been to court fighting for tenants' rights. Read about two significant cases in *When a rental property is to be sold* and *Genuine or just*.



Happy reading,
Your Tenants' Union

Our 7 asks for the Tasmanian State Election

Over the past year we have seen alarming signs of a housing crisis in Tasmania, including low vacancy rates and increasing rents amongst others. With the state election imminent we have asked the Liberals, Labor and the Greens to include policies into their agendas, which we think will greatly improve housing conditions for the growing number of renters in Tasmania.

These are our 7 areas of reform:

1. Security of Tenure

- ***Remove the ability to end a fixed-term lease agreement for no other reason than lease expiration.***
- ***Lease expiration should not be available to social housing providers.***

Adequate housing provides the base from which people can participate effectively in their community. As such, tenancy should be viewed as the provision of a basic need rather than a simple contractual arrangement for goods and services. Stability and certainty must be protected so that tenants are able to assert their rights without fear of eviction. However, this is not borne out in practice with a recent report published by CHOICE finding that around half of all renters worry they will be blacklisted from future tenancies and 14 per cent refuse to stand up for their rights because of the possibility of landlord recrimination.^[1]

We strongly believe that principles of natural justice should inform the *Residential Tenancy Act 1997* (Tas) ('the Act'). If there is to be no change to the use of the property, tenants should be able to maintain their tenure unless there has been a proven breach of their residential tenancy agreement. We therefore recommend the repeal of those sections of the Act that allow a fixed-term lease to be ended on the basis of lease expiration.

At an absolute minimum, we request that lease expiration be removed as a ground for eviction from public and community housing. It is concerning that some social housing providers deliberately circumvent the tenant's right to reasons and a right of review by intentionally listing lease expiration as the reason for the eviction.^[2] In our opinion, social housing providers must provide a higher degree of protection for their tenants given the purpose of social housing and the heightened risk of homelessness.

2. Rent Controls

- ***Limit the amount of the rent increase to CPI and/or a fixed percentage.***
- ***Allow the termination of the lease agreement if the rent is unaffordable.***

It is clear that market mechanisms are not working efficiently in the Tasmanian and Australian housing markets. Since the turn of the millennium market conditions have deteriorated for tenants with rental prices dramatically outstripping inflation and public housing stock falling despite population increases.

According to the latest data, vacancy rates in Hobart are extremely low and rents for three bedroom properties have gone up by 23 per cent in just twelve months.^[3]

We strongly believe that rent increases occurring during a lease should be subject to controls as is the case in the Australian Capital Territory. In the ACT rent increases are limited to a rate based on inflation. The onus on contesting the rent increase is dependent upon the quantum. If the proposed increase is above the proscribed rate the owner has the onus of establishing that the increase is justified, and if below, the tenant must demonstrate that the increase is excessive.^[4]

Additionally, many extensions of lease agreement will provide for a rent increase. With vacancy rates at extremely low levels in Greater Hobart many tenants believe that they have no choice but to agree to the rent increase. In some cases, tenants will apply to the Residential Tenancy Commissioner for a determination that the proposed increase is unreasonable. However, given the significant increase in rents over the last year there is no certainty that the Commissioner will find the increase unreasonable, leaving the tenant in a financially unsustainable tenancy. We therefore strongly recommend the introduction of a hardship provision that would allow a tenant to terminate the tenancy in circumstances in which they can prove that the rent is unaffordable.^[5]

3. Family Violence

- ***Amend the Act to allow for a broader range of options.***
- ***Remove the ability to blacklist victims of family violence for damage or rental arrears caused by perpetrators***
- ***Remove the liability of victims for the acts or omissions of perpetrators lawfully on the premises***

The Act is currently limited in its ability to assist victims of family violence. The only order able to be made is that a victim of family violence can have the perpetrator removed from the lease agreement.^[6] In practice, the making of such an order will often mean that the victim is forced to pay all of the rent and continue to live in a property known to the perpetrator. In our experience, some victims are worried for their safety and want to relocate. There may also be occasions where the victim wants to move but the perpetrator wants to remain in the property due to work or other commitments.

We strongly recommend that the *Family Violence Act 2004* (Tas) is amended so that the court is provided with broader powers including (1) the ability to terminate the agreement or; (2) terminate the agreement and establish a new agreement for the benefit of the victim or; (3) terminate the agreement and establish a new agreement for the benefit of the perpetrator. This would bring the Act into line with other jurisdictions including New South Wales.^[7]

As well, the Act allows landlords to keep a residential tenancy database (i.e. a blacklist) of tenants who have breached the terms of their lease agreement. Tenants can only be blacklisted for breaches that still require the repayment of monies (unpaid rent or damage to property) or for evictions from an immediate termination.^[8]

In practice, this means that many family violence victims continue to be punished for a perpetrator's actions. If a victim of family violence applies for a family violence order and the perpetrator is subsequently removed from the agreement, the victim will often be required to pay all of the rent. This may lead to financial hardship and the risk that the victim will fall into rental arrears. If the victim is subsequently evicted due to rental arrears the landlord may blacklist the victim making it difficult to find alternative accommodation. As well, where a victim is evicted from their property due to the perpetrator's ongoing damage of the property, or where damage has been done to the property by the perpetrator the landlord can have the victim blacklisted.

We strongly recommend that Part 4C of the Act is amended to prohibit landlords and real estate agents from blacklisting tenants for actions arising from the actions of the perpetrator including damage to property and unpaid rent.

Finally, the Act provides that a tenant is liable for any act or omission of persons lawfully on the premises.^[9] We strongly recommend that the automatic liability of tenants for the acts or omissions of others should be removed in circumstances where tenants can prove that the damage arose from family violence.^[10]

4. Standard Forms and Lease Agreements

◦ *Introduction of Standard Forms and Lease Agreements*

Most lease agreements contain provisions that purport to exclude, restrict or modify the operation of the Act. A recent review by our lawyers of their current case files found a number of provisions contained in residential lease agreements that were inconsistent with the Act, including:

- That the tenant is responsible for the repair or replacement of whitegoods that came with the property; and
- That the tenant accepts the property in its current condition; and
- That the tenant must allow access to the property to carry out a valuation or appraisal; and
- That the tenant not cause a disturbance or annoyance to anyone else; and
- That the tenant have the carpets cleaned by a professional cleaning company approved by the landlord; and
- That the tenant is responsible for all costs associated with lodging a debt with a debt collection agency including the debt collectors costs.

The lack of standardisation means that many tenants believe that they are forced to comply despite the clause/s being unlawful under the Act. Given that every State and Territory bar the Northern Territory and Tasmania have standard lease agreements we believe that this can and should be done.

As well, tenants often raise their concern at the different forms used by landlords and real estate agents and the information contained therein. An excellent example is the application form provided to prospective tenants with a recent report finding that 60 per cent of renters surveyed believed that they were required to provide an excessive amount of information on the application form.^[11]

Earlier this year we carried out a review of all real estate agencies who make their application forms publicly available and our investigation found that there is information requested of prospective tenants in some application forms that may be unlawful. There is also information required that we believe is discriminatory, amounts to an invasion of privacy or is simply unnecessary. Examples include:

- The requirement that prospective tenants provide a criminal history check; and/or a credit check; and
 - The refusal of tenants who require Colony 47 financial assistance to pay the bond; and
 - The refusal of any prospective tenant who has an outstanding debt; and
 - The requirement that prospective tenants list their financial commitments; and
 - The requirement that prospective tenants provide a minimum of four referees.
-

Much of this information is irrelevant to the tenancy or the ability of persons to maintain the tenancy successfully. Tenants who feel uncomfortable about providing information will often contact us requesting advice about their right to refuse. The lack of a standard application form means that there is practically very little that can be done. The tenant must provide the information required or face the very real risk that the application will be passed over in favour of someone who is prepared to provide the information.

We therefore strongly recommend that a standard residential lease agreement as well as standard forms, including a standard application form for all prospective tenants should be introduced.

5. Pets

- ***Allowed unless landlord has good reason for their exclusion***
- ***Include 'assistance animal' in list of exceptions***

The Act currently provides that a tenant is not allowed to have a pet without the landlord's permission.^[12] In practice, most lease agreements include a no pets clause meaning that the landlord does not have to give any thought to the tenant's request. As a result, many tenants with pets are forced to look for rental accommodation in areas less accessible by public transport or to surrender their pet, with the RSPCA recently reporting that 15 per cent of all cats and dogs turned into them were because the owners were moving and could not take their pets with them.^[13]



We strongly believe that the Act should be amended so that all tenants have the ability to have a pet unless the landlord has reasonable grounds for their exclusion.^[14]

It should also be noted that the current exclusion of pets from rental properties does not apply to guide dogs.^[15] In our opinion, this should be broadened to include 'assistance animals'. This would make the Act consistent with the *Anti-Discrimination Act 1998* (Tas) and the *Disability Discrimination Act* (Cth). The failure to expressly include 'assistance animal' has meant that we have had to institute legal proceedings on behalf of a number of tenants who have required such animals for their medical conditions.^[16]

6. Review of 'Sharing' Accommodation Policy

- ***De-regulation model scrapped***
- ***Policy reviewed with all stakeholders invited to roundtable***

We strongly believe that so-called 'sharing' accommodation businesses, including Airbnb should be regulated. In our opinion there should be a limit on the number of days an entire house/unit can be rented out through Airbnb.

We are concerned that the alarming increase in the number of entire homes made available through home sharing websites at the expense of long-term tenants is the result of a lack of consultation with relevant stakeholders. It is our understanding that no community organisation that works with residential tenants was invited to the sharing accommodation roundtable with a Government media release stating that invitees included Airbnb and the tourism and hospitality industries.^[17]

The adoption of a completely deregulated model has seen significant growth in the number of entire homes made available to tourists at the expense of long-term tenants. For example, Real Estate Institute

of Tasmania president Tony Collidge was recently quoted as stating that there was a trend for property owners, who once rented to locals, to offer their investment properties as Airbnb accommodation [and this] was having an impact.^[18]

We strongly believe that the State Government needs to reign in airbnb by limiting the number of days that entire homes, particularly in residential areas can be rented out to tourists. This in turn will place long-term tenants on a more level playing field and ensure that more homes are available for Tasmanian tenants. At the very least, the Government should review the policy by inviting all stakeholders, including those that work with residential tenants to a reinstated roundtable.

7. Tenant Advocacy

- **Funding increase as well as security of funding for services providing tenancy advocacy**

We do not believe that appropriate levels of funding are provided to organisations advocating on behalf of tenants, including our own. Our core funding has not increased in many years despite the significant growth in the number of tenants we advise through our telephone advice line, face-to-face and court representation. Additionally, service delivery could be significantly improved with the opening of a dedicated northern office.

We are also concerned by the lack of security of funding. For a number of years we have been in receipt of 12-month funding contracts which has resulted in job insecurity and difficulties in retaining staff. The loss of staff in turn results in a loss of knowledge and an inefficient use of the organisation's time as new staff need to be trained. We believe that a more sustainable model would see core funding provided for a minimum of three years.

[1] CHOICE, National Shelter and the National Association of Tenant Organisations, *Unsettled: Life in Australia's private rental market* (February 2017). The report can be accessed at <https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report> (accessed 23 January 2018).

[2] For a recent example see Rhiannon Shine, 'Eviction of disability pensioner from Housing Tasmania unit a test case, court hears', Australian Broadcasting Corporation 12th December 2017. The article can be accessed at <http://www.abc.net.au/news/2017-12-12/eviction-of-disabled-man-from-housing-tasmania-a-test-case-cour/9250348> (accessed 23 January 2018).

[3] David Beniuk, 'Rent hikes of 20% push tenants to wall', *The Mercury*, January 5th 2018 at 9. Also see 'Tasmanian Rents', a compilation of data collected by the Rental Deposit Authority and published by the Tenants' Union of Tasmania. The most recent data can be accessed at <http://tutas.org.au/wp-content/uploads/2017/07/Tasmanian-Rents-September-2017.pdf> (accessed 23 January 2018).

[4] Section 68(3) of the *Residential Tenancies Act 1997* (ACT) sets out the factors that are taken into account including: (a) the rental rate before the proposed increase; (b) outgoings or costs of the landlord in relation to the premises; (c) services provided by the landlord to the tenant; (d) the value of fixtures and goods supplied by the landlord as part of the tenancy; (e) the state of repair of the premises; (f) rental rates for comparable premises; (g) the value of any work performed or improvements carried out by the tenant with the lessor's consent; and (h) any other matter the ACT Civil and Administrative Tribunal considers relevant.

[5] Examples could include loss of employment or where the rent increase was unsustainable.

[6] Section 17 of the *Family Violence Act 2004* (Tas).

[7] Section 102 of the *Residential Tenancies Act 2010* (NSW). See also section 44 of the *Residential Tenancies Act 1997* (ACT).

[8] Section 41 of the *Residential Tenancy Act 1997* (Tas).

[9] Section 59 of the *Residential Tenancy Act 1997* (Tas).

[10] This would bring Tasmania into line with other jurisdictions including section 233C of the *Residential Tenancies Act 1997* (Vic) and section 89A(11) of the *Residential Tenancies Act 1995* (SA). The New South Wales Government has also recommended that a like provision be introduced, see Lucy Cormack, 'Domestic violence victims given the power to terminate rental contracts early', *Sydney Morning Herald*, 5 July 2016. As found at <http://www.smh.com.au/business/consumer-affairs/domestic-violence-victims-given-the-power-to-terminate-rental-contracts-early-20160704-gpy1ky.html> (accessed 23 January 2018).

[11] CHOICE, National Shelter and the National Association of Tenant Organisations, *Unsettled: Life in Australia's private rental market* (February 2017) at 12. The report can be accessed at <https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report> (accessed 23 January 2018).

[12] Section 64B of the *Residential Tenancy Act 1997* (Tas).

[13] Jonathan Hair and Brendan Arrow, 'Victorian tenants given right to have a pet under sweeping changes to rental laws', Australian Broadcasting Corporation 8th October 2017. The article can be accessed at <http://www.abc.net.au/news/2017-10-08/victorian-tenants-allowed-pets-in-rental-properties/9027000> (accessed 23 January 2018).

[14] Examples could include council regulations that excluded backyard chickens or the rules of a body corporate.

[15] Section 64B(2) of the *Residential Tenancy Act 1997* (Tas).

[16] As defined in section 9(2) of the *Disability Discrimination Act* (Cth). Examples include a dog trained to predict when its owner was likely to have an epileptic seizure and a pet bird who alleviated the side effects of its owner's mental illness.

[17] Will Hodgman and Peter Gutwein, 'Embracing the sharing economy' 3rd February 2017. As found at http://www.premier.tas.gov.au/releases/embracing_the_sharing_economy (accessed 23 January 2018).

[18] Helen Kempton, 'Families struggling in tight rental market' *The Mercury* 4th October 2017. As found at <http://www.themercury.com.au/realestate/families-struggling-in-tasmanias-tight-rental-market/news-story/4d574bcb61cc7896a64684ead2049598> (accessed 23 January 2018).

New projects thanks to the Solicitors' Guarantee Fund

The Tenants' Union of Tasmania receives its core funding via the State and Federal governments. This funding has been a consistent amount for well over 10 years with limited increase. To allow us to further our reach and our work we often rely on one off grants to cover these costs.

We are fortunate to have been successful in our application to the Solicitors' Guarantee Fund for a grant to provide further services to the community. This grant will see us increase our presence in Launceston, allowing us to provide a duty solicitor role in the Launceston Magistrates Court one day each week along with the continued one day a week for advice from the Launceston Community Legal Centre. Our Community Legal Education program will continue on statewide providing information and education to those in the sector including tenants, advocates and the industry. We will be able to further develop our website by translating our popular fact sheets into five other languages, and to continue to update and develop our Don't Panic booklet. Finally we are also lucky enough to have a dedicated policy officer for 12 months. This position will enable us to focus on the specific intricacies of the Tasmanian residential rental market and to develop key ideas and solutions to the housing crisis. We would like to thank the Minister for Justice the Honorable Elise Archer and the Solicitors' Trust for the approval of this grant.

Genuine or just?

For more than seven years we have argued that Housing Tasmania and other social housing organisations should not evict tenants on the basis of lease expiration. We strongly believe that if a tenant is in rental arrears they should be informed that they are in rental arrears and provided with 14 days to remedy the breach. Likewise, if a tenant has a pet, are sub-letting the premises without consent or playing loud music, they should be made aware of the breach and given an opportunity to remedy the breach or risk eviction. Unfortunately, the practice of 'no reason' evictions continues unabated.

In an attempt to resolve the issue legally, we recently argued in the Supreme Court that the serving of no reason evictions was not 'genuine or just' as required in the Act. Our client was a 53 year old intellectually disabled man who has lived in a Housing Tasmania property for 10 years and had received a Notice to Vacate informing him that he was being evicted because his lease was ending. At the hearing, our client's evidence was that if he had breached his lease agreement he should have been provided with an opportunity to remedy the breach; that Housing Tasmania were deliberately circumventing the tenant's right of review by failing to list the breach; and that he would be evicted into homelessness. Importantly, we argued that the court could not be satisfied that the reason listed on the Notice to Vacate was genuine in light of Housing Tasmania's purpose and it was not just because of the risk of homelessness. The Judge has reserved his decision with the judgment likely to be handed down later this year.

Finally, we would like to extend our gratitude to Ron Merkel QC and Maree Norton for their excellent advocacy on behalf of our client.

When a rental property is to be sold



The Act allows an owner to terminate a non-fixed lease if "the premises are to be sold or transferred to another person". If an owner chooses to issue a Notice to Vacate on this basis they must provide with it "proof of an agreement to sell the premises or to transfer the premises to another person" (section 43(3A) of the Act). In *Demarte v Mayne* (M/2017/3349) the Notice to Vacate was served with a copy of an agreement between the owners and a Real Estate Agency to put the property on the market. The question for the Magistrate was whether this satisfied the requirements under the Act. We argued that the Act requires a contract of sale (or something equivalent) to be provided to the tenant, as an agency agreement is insufficiently

certain. A property may be on the market for months or years before it is sold, or may be taken off the market due to lack of interest (and re-tenanted to someone else). In some circumstances the landlord may even intentionally seek to evict a tenant who has not breached their lease agreement and uses the aforementioned agency agreement as an easier way to have the tenant evicted. The Magistrates Court agreed with our submission, ruling that notice to vacate under section 42(1)(b)(i) must be served with

contract of sale (or something to that effect) to be valid. In summary, a Notice to Vacate must have a contract for sale attached to be valid. Merely attaching an intention to sell is likely to be held invalid.

Upcoming Dates

Duty Solicitor Launceston

In 2018 we have a Duty Solicitor in the Launceston Magistrates Court once a week.

Our solicitors will be able to support any tenancy case on the spot, but preparation will enhance your chances for a positive outcome.

If you have a tenancy case scheduled for one of the dates below, contact us on 6223 2641 at least 24 hours before Court and leave a message including your name, contact number and "in Court in Launceston".

Thursday, 22 February 2018

Thursday, 1 March 2018

Thursday, 8 March 2018

Tuesday, 13 March 2018

Wednesday, 21 March 2018

Thursday, 29 March 2018

We will publish further dates on our website as they come to hand.

Community Legal Education Sessions

Tenants' Union solicitor Alex Bomford travels the state conducting Community Legal Education (CLE) sessions, which aim to increase community awareness and understanding of our residential tenancy laws.

Upcoming public sessions and stalls include:

- 21 February 2018 UTas Cradle Coast, Burnie 12pm
- 27 February 2018 UTas TUU O-Week, Launceston 10am-2pm
- 27 February 2018 Burnie Community House, Burnie 3pm
- 28 February 2018 UTas TUU Cradle Coast O-Week, Burnie 11am-12:30pm
- 7 March 2018 LINC Bridgewater 10:30am-12:30pm
- 11 April 2018 Rosebery Community House, Rosebery 11:30am
- 18 April 2018 Multicultural Hub Moonah, 6pm

A CLE session typically includes:

- A presentation that guides the audience through the Residential Tenancy Act 1997 (Tas);
- Example scenarios;
- A question and answer session with the solicitor; and
- Providing pamphlets that summarise the law and contain salient contact details.



For enquiries and further information please contact Alex
by email at Alex_Bomford@clc.net.au.

Tenants' Union Services

TELEPHONE ADVICE LINE

Monday to Friday*

9.30am to 4pm

1300 652 641

6223 2641

FACE-TO-FACE SERVICE

Hobart

166 Macquarie St

Tuesday, Wednesday, Thursday*

9.30am to 12.30pm



Launceston

By appointment

Call 1800 066 019 or 6334 1577



Devonport

By appointment

Call 6434 8720



**except public holidays.*

ONLINE

www.tutas.org.au

The information in this newsletter is not legal advice. For information regarding a specific tenancy problem, please phone the Tenants' Union on (03) 6223 2641 or 1300 652 641. The Tenants' Union of Tasmania Inc accepts no responsibility for actions based on this information, nor for actions based on electronic translations of this.

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