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News from the Tenants' Union of Tasmania

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TUT Updates

Staff changes, our Don't Panic and Smoke Alarm Legislation

The Tenants' Union is constantly evolving, recently welcoming new editions to our staff team: former volunteers Jeff Thompson and Alex Bomford have stepped up into the roles of solicitor and solicitor & community legal educator respectively. Having juggled our advice line and undertaken research for our lawyers previously, Jeff and Alex have hit the ground running. Combined, they have opened a record 37 new cases and saw almost 100 clients in our drop in service in the first quarter of 2016. Keep up the good work!

As well, Steve Bennett has recently joined us as our training and development

officer focussing on our volunteer and online training programs. Steve has experience in the not-for-profit sector having worked in the housing industry prior to his current role. Steve is currently working towards his Bachelor of Education in applied learning. His experience and expertise in the training area is proving to be a great asset to the TUT.

After a period of virtual life only our 'Don't Panic' booklet is finally ready to re-appear in the real world. Our little red paper guide will be available shortly. Keep an eye out for it.

Date to be aware of: On 1 May 2016 the Tasmanian Smoke Alarm Legislation, which commenced in 2013 reaches its final stage of rollout. From that day all smoke alarms will have to be either mains powered or fitted with a 10-year battery. For more information on smoke alarms check the [Consumer Affairs and Fair Trading](#) fact sheet.

#FundEqualJustice

A campaign to save Australian CLCs

In the wake of National Youth week, the National Association of Community Legal Centres (NACLC) has pointed out that young people across Australia should be celebrating their opportunity to 'Be The Future'. Instead a large number of young Australian have to deal with legal problems or struggle with the ability to pay for costs caused by a legal issue that just won't go away.

"Community Legal Centres (CLCs) provide free legal help to children and young people across Australia. In 2015, CLCs assisted over 74,000 young people between 18-34 years and over 3,500 young people under 18 years. CLCs also provide free legal help to parents and others on issues affecting children, including over 3,300 advices on child protection issues and over 4,000 advices on child support last year" said Rosslyn Monro, NACLC Chairperson.

The Tenants' Union of Tasmania has seen a significant rise in young people calling our advice line in the previous financial year. Of 831 callers who provided us with their year of birth in 2014-15 around 46% were 34 years old or younger. Among the clients our lawyers represented in court roughly 30% belonged to that age group.

However, young Australians aren't the only marginalised group that rely on Community Legal Centres, when they are confronted with legal issues. Yet, in 2017 CLCs face a Federal funding cut of 30%, which will have a significant impact on the ability of people across Australia to get legal help.

As a result, NACLC has launched Community Law Australia – Fund Equal Justice, a campaign to raise awareness and demand a reversal of planned funding cuts. Visit the [Community Law Australia](#) website and learn more about the works of CLCs across Australia and the Fund Equal Justice campaign.



Share Your Rental?

Legal Issues around Airbnb and Tenancies.

The sharing economy has been growing rapidly over the past years. Cars, electrical goods and even household chores can now all be acquired through sharing websites. But the broad range of services offered by the sharing economy often operates in a legal vacuum. As some sharers are offering similar services as businesses that are subject to regulations, the question of whether sharers should meet the same standards arises.

Undoubtedly one of the biggest sharing enterprises is Airbnb, a platform for short term accommodation, originally but not exclusively in people's homes. Around the world courts are busy determining the multi-faceted issues that arise from Airbnb, negotiating its legal frameworks and potentially that of other sharing ventures.

In late March of this year a couple of Airbnb hosts in a rented property sought a ruling in Victoria.

The case centred on two tenants, who were served with an eviction notice after letting their St Kilda apartment on Airbnb without their landlord's consent. The Victorian Civil and Administrative Tribunal (VCAT) ruled in favour of the tenants.

VCAT found that the tenants had not technically sublet their rental property, which is prohibited under the *Residential Tenancies Act* in Victoria. While subletting in Victoria as well as Tasmania means the subtenant has an

exclusive right to use the premises to the exclusion of all others, Airbnb provided merely a licence to occupy and use the rented space.

The decision was supported by the Tenants Union of Victoria as it provided greater clarity around the issue. Policy officer Yaelle Caspi said: “Tenants should have the right to utilise the property as they wish, so long as they are upholding their responsibilities as a tenant.”

At the same time on the other side of the world, in Canada, tenants were faced with the other side of the Airbnb phenomenon. In that case the tenants were evicted from their home, purportedly because a family member of the landlord was moving in. This is the same ground that tenants on a non-fixed term lease in Tasmania may be subject to. After moving out of their apartment the tenants found their former home advertised on Airbnb. Instead of the \$2100 the tenants had been charged monthly, the apartment was being advertised for between \$162 and \$698 a night, potentially netting the landlord more than double the previous monthly rent.

In Tasmania a few hundred people offer their home or part of it on the Airbnb website. While there is yet to be a determination in Tasmania, the Victorian decision provides some guidance on how Tasmanian courts would find.

However, although tenants have the right to use the property as they wish subject to the Residential Tenancy Act, they could well be marginalised in the wake of Airbnb’s growth as landlords might step away from residential tenancies to more lucrative short term license agreements. Prospective regulations should and probably would anyway not be able to ban sharing ventures like Airbnb, yet residential tenancies, which already face shortages especially in inner city locations around Tasmania need to be secure.

Community Legal Education Sessions

Alex Bomford will travel the state to educate tenants, social workers and everyone concerned on their rights.

These are his upcoming sessions:

20 April **Jirah House**, Kingston, 10 am

5 May **Goodwood Community Centre**, Goodwood, 1:30pm

17 May **Tasmanian University Union (TUU) Cradle Coast**, Burnie, 2:00pm

18 May **Karinga Young Women's Shelter**, Launceston, 2:00pm

More CLE sessions are in the making, but have not been finally confirmed yet.

If you would like to host a session in your organisation, for staff, clients or a group of tenants, please contact alex_bomford@clc.net.au

Straight Down the Line!

Tenants' Q&A from our advice line an Facebook page

Q Some houses and apartments I have inspected when looking for a new place were in a really bad condition. I was told, that after new laws properties would have to be clean when I start a lease. But how clean is it clean?



Changes to the *Residential Tenancy Act 1997* (the Act) have been coming into practice over the past few years and will continue to change until August 2018. The variations in time frames are to allow landlords the opportunity to ensure their rental properties meet the required standards without placing too much of a financial burden on a landlord in one hit.

From the 31 August 2015 minimum standards for rental properties have been introduced. Again, this is a gradual introduction. One issue that has surfaced on a number of occasions through our telephone advice line is that of the premises being clean at the beginning of a tenancy (section 36J of the Act) This requirement came into effect within 30 days for all new leases. It means, the property has to be clean, when the lease agreement is signed and the keys are handed over. So tenants need not be put off, if the property is not clean yet during the inspection. We suggest tenants to sign a lease anyway and, if necessary, take actions as described below later. The failure to provide a property for rent in a clean condition is a breach of the Act.

Two issues arise here, what is deemed clean and what rights does a tenant have if it is not clean when they take possession of the premises.

1. **The Act does not define what clean is to mean.** It is quite a subjective term as people have varying ideas to what they deem as clean. Based on dictionary meanings, it simply means free from dirt, marks and unwanted matter. In this instance we would argue unwanted matter to be things such as mould, rodents and smells. At the beginning of the tenancy, a tenant should thoroughly inspect the property to complete the condition report and to ensure that the property is clean. Check in cupboards, behind stoves and fridges and through each room.

2. **Rights of a Tenant:** Providing a property at the beginning of a lease that is not clean is a breach of section 36J of the Act, a tenant has a right to terminate an agreement. If the tenant believes the property is not clean then ending the agreement is an option.

However, generally speaking when a tenant has just begun a lease the last thing on their minds is leaving the property and finding somewhere else, so this is often not an option. Another opportunity would be having the landlord rectify the problem. Call the landlord and inform them, take pictures to provide evidence and request it is done within a specific time period. If this is not successful then a tenant should complain to the Residential Tenancy Commissioner as soon as possible and provide their evidence. (1300 654 499)

For general information please have a look at our fact sheets on our website or if you need some advice give us a call on 1300 652 641



Q Can my landlord prohibit, that I smoke in the property I am renting? Is there a general ban on smoking in rental properties in Tasmania?

Smoking is banned in Tasmania from all public indoor areas. You can even be fined for smoking in your car when a minor is also present. But, what about smoking in rental properties? Is there a general ban on smoking in your home if you are renting?

Reviewing the *Residential Tenancy Act 1997*, which lays out the law for rental

properties in Tasmania, the short answer seems to be that it is not prohibited to smoke in rentals. But there are a few more facts that you should take into consideration.

Terms that are not provided for in the Act can be written into the lease agreement, so check your lease to see whether it contains a rule about smoking.

Many landlords use standard lease agreements as provided by the Real Estate Institute of Tasmania (REIT). The REIT lease (as of March 2011) states:

“Looking after the premises means [...] that a tenant must not without the consent of the owner in writing [...] (m) Smoke or allow to be smoked any cigarette, cigar or other device inside the premises.”

So, if your landlord gives their written permission, you can smoke.

However, even if your lease agreement does not prohibit smoking, there are grounds for being cautious. The general rule for rentals is that at the end of a tenancy a property has to be returned in the same condition as it was at the beginning, apart from reasonable wear and tear. Smoking may cause damage to the property that is more than reasonable wear and tear. That means you may have to pay for professional cleaning or painting when you move out.

The other cautionary note is the smoke alarm legislation, which became effective in May 2013, and states that every home has to be fitted with functioning smoke alarms. It is against the law to disable smoke alarms by, for example, removing the battery. There are two types of smoke alarms that comply with the standards outlined in the legislation – ionisation and photoelectric smoke alarms. The recommendation of fire service and smoke alarm providers is for the installation of the photoelectric type, which ‘see’ smoke. That means they detect visible particles of combustion and that includes smouldering cigarette smoke. In short, they will go off when you smoke and you are not allowed disable them to do so.

To sum up, there is no general ban on smoking in rental properties in Tasmania, but there are a number of reasons you might want to stay away from it, not least to your health!

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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