



Winter 2008

The Rent Rant

Newsletter of the Tenants' Union of Tasmania Inc

Upper House Recommends Review of Key Tenant Legislation

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A Select Committee of the Tasmanian Legislative Council has recommended that the Tasmanian Parliament conduct a review into the *Residential Tenancy Act 1997* (RTA), the principal act covering public and private tenancy. The Select Committee found that the Act provides a low level of minimum standards, especially relating to the condition of dwellings.

The Tenants' Union, who made a submission to the Select Committee, have welcomed the recommendation and hope that the Minister responsible for Housing, Lara Giddings and Attorney-General David Llewellyn act on the Upper House recommendation.

TU Principal Solicitor, Sandy Duncanson said "The *Residential Tenancy Act* provides a low level of protection for tenants, preferring to maximise landlords investment potential. The Act doesn't oblige landlords to provide heating, smoke detectors, or maintain the property properly. Landlords have the power to evict tenants almost on a whim, but conversely does not allow tenants to vacate when faced with unaffordable rent increases during the term of their lease."

The TU will make the push for a review and the subsequent deliberation a major priority for its legal reform program in the next twelve months.

Homeless Beat Hobart City Council and Faceless Neighbours in Supreme Court Battle

The Full Court of the Supreme Court rejected an appeal by the Hobart City Council (HCC) and nearby residents to overturn a decision to allow a homeless men's shelter in an upmarket Hobart street.

Initially HCC planners approved the shelter, but following objections from well-heeled local residents surrounding Fitzroy Place, aldermen overturned the recommendation. The owner of the property then appealed the decision to the State's Resource Management and Planning Appeal

Tribunal (RMPAT) who overturned the HCC's decision. The HCC and local residents then co-funded lawyers and appealed initially to the Supreme Court where they lost, and subsequently to the Full Court of the Supreme Court and again failed in their bid to stop the homeless shelter. The TU publicly opposed both appeals because the RMPAT decision was clear and correct and therefore the appeals process would be a waste of council funds.

Sandy Duncanson, Principal Solicitor of the Tenants' Union said "the result was a great day for social inclusiveness in Hobart. Rising rents have pushed many low income tenants from inner city dwellings. At least this decision arrests some of the exodus."

The TU is concerned that the Tasmanian Government's proposed redevelopment of Highfield House in the Hobart CBD will meet the same prejudices as Fitzroy Place. Already nearby businesses have signalled that they fear a negative impact on business and property values.





Legal Discussion: Illegal Fees

In the previous issue of this newsletter, Rent Rant discussed LJ Hooker's use of the 'Priority Card', which is a method of paying rent that charges tenants administrative fees and charges. The Tenants' Union has formed a legal opinion in relation to the issue, which will be passed on the Office of Consumer Affairs and Fair Trading (CAFT), which has yet to express a view on the subject.

The Tenants' Union views such fees as unlawful because they contravene section 17 of the *Residential Tenancy Act 1997*. This section defines the limited circumstances in which a landlord may receive money from a tenant, these being rent, security deposits (bonds) and water usage fees.

Other Australian jurisdictions have enacted legislation in similar, if not identical terms, and have specialist Tribunals dealing with tenancy related matters. Several cases have been considered that are related to the use of these payment methods.

In the A.C.T., *Kane v Broadsmith* related to the alteration of a lease agreement by a landlord to implement the use of the Priority Card. It was found that the card breached section 15(1) of their legislation, which is virtually identical to that of Tasmania. The Tribunal stated that an obligation to use the card, without an alternative payment method would constitute 'requiring money other than rent' or security deposit.

Similarly, in South Australia, the case of *Red Shield Housing Association v Chilton* went so far as to say that a fee for paying

rent is not of a class of fee that a landlord can confer upon a tenant. The Tribunal stated that the obligation of the tenant is only to pay the agreed rent at the agreed time.

In addition, the Office of Consumer and Business Affairs in South Australia, in their 2004 ebulletin, stated that the fees associated with the use of the Priority Card cannot be charged to a tenant under Section 53 of their Residential Tenancy Act (almost identical to Tasmania's section 17). Again, the fees associated with the use of the card must be borne by the landlord or agent; whoever holds the account.

Finally, in reference to LJ Hooker's view that the card is administered by a third party (LJ Hooker claim that the landlord or agent doesn't seek money other than rent because it is another company that administers the Priority Card), it is the view of the TU that this constitutes a breach of section 47 of the *Trade Practices Act 1974 (TPA)*. This section prohibits 'third line forcing', which involves the supply of goods or services on the condition that the purchaser buys the goods or services from a specified third party. It also involves a refusal to supply because the purchaser would not agree to that condition. It was the view of the A.C.T. Tribunal in *Kane v Broadsmith* (outlined above) that forcing tenants to enter into an agreement with a third party constitutes a breach of the *TPA*. Section 47 (8) of the *TPA* specifically restricts third line forcing in relation to the granting and renewing of a lease agreement, or exercising a right not to terminate a lease. Although more recent amendments to the *TPA* have watered down the 'competition test', the Tenants' Union believes that the Priority Card excludes any competitors from providing similar services to the tenant, and therefore remains in breach of the legislation.

The TU will be contacting the Office of Consumer Affairs and Fair Trading in relation to our findings, and are hoping to resolve this issue quickly.

- Tracey Chapman

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New Volunteers Advising Tenants

There has been an influx of volunteers at the Tenants' Union recently.

Tracey Chapman has recently completed her Graduate Diploma in Law through work experience at the TU. Her advice and research has been greatly appreciated by staff, management committee and the tenants she has helped. We congratulate Tracey on her admission to the Supreme Court.

In addition, five new volunteers have started on our advice line in 2008. Kirsty Abercromby, Alex Alcock, Kristy Kinsella, Stacey Webb and Aneita Browning have all completed training and are giving advice to tenants. TU solicitor Meredith Upchurch who supervises the advice line said "the new volunteers have shown great aptitude and have picked up their roles very quickly. They are already a real asset to the Tenants' Union."

Rent Increase Scoreboard

The TU is trying to get legislation amended to prevent excessive rent increases during the term of a lease.

Presently, if your lease allows for a rent increase there is no limit to the increase as long the rent does not exceed "the general level of rents for comparable residential premises in the locality or a similar locality".

Some of the more extraordinary rent increases reported to the TU recently include:

Sth Hobart: from \$200 to \$280
Claremont: from \$185 to \$235
New Town: from \$200 to \$240
Kingston: from \$165 to \$210

Our Staff

Principal Solicitor:

Alexander (Sandy) Duncanson

Solicitor:

Meredith Upchurch

Solicitor (North-West):

Sarah Hiller

Bookkeeper:

Mick Lynch

Administrator/Advocate:

Phil Hoffen

Volunteers:

Bob Jones

Mick Lynch

Alex Fry

Tracey Chapman

Kirsty Abercromby

Alex Alcock

Kristy Kinsella

Stacey Webb

Aneita Browning



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