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LANDLORD AND TENANT ACT REFORM COMMITTEE - A VICTORY FOR THE LANDLORD LOBBY

As you may know, recently the Landlord and Tenant Act Reform Committee set up by the Minister for Consumer Affairs (Mr. Einfeld) brought down its report embodying a number of recommendations. After looking at it, we feel there are a number of causes for concern (see below for some of the details).

Accordingly, we are conducting a campaign to get some changes before the report is adopted by the State Government. We have ourselves prepared a detailed submission which we are now presenting to the committee. At the same time we are contacting community groups and agencies, trade unions, Labor Party branches and so on to create interest and pressure from the community. This week also we are conducting a campaign through the press. We are encouraging groups to do two things: (1) Press the government for more public consultation and for an extended time for submissions to be made -- at present, submissions close on September 30; and (2) Make submissions themselves, hopefully along similar lines to our own.

(continued on page 2)



*Is your Annual
Subscription due?
... see page 10
(back page)*



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118 Regent Street, Redfern, N.S.W., 2016

TENANTS' HOTLINE

Phone 698-8033 Mon - Fri 1 - 9pm
Sat 9.30am - 12.30pm

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If you would like to have a copy of the Report, or if you would like to press for more public consultations or make submissions yourself, we suggest you contact

Mr. P.N. Berry,
Secretary,
Landlord and Tenant Act Reform Committee,
C/- Department of Consumer Affairs,
1 Oxford Street,
DARLINGHURST 2010

Our major concerns over the proposals include:

1. New procedures for streamlining evictions. Tenants will have to apply to a Court within seven days after issue of a summons, stating that they wish to defend the matter or get an extension of time. Court proceedings are both intimidating and costly, and many tenants will feel reluctant to undertake them. With looser procedures for serving summonses, it is even possible that the first time some tenants will know about eviction proceedings is when the police arrive on the doorstep to throw them out.
2. The recommendations do not really come to terms with the problem of retaliatory evictions. While setting up a Residential Tenancy Tribunal is a good idea, in practice tenants won't complain for fear that the landlord might retaliate and evict them. The Report recommends that Courts be given powers to postpone an eviction order where it is obvious the landlord is retaliating because the tenant sought to raise some matter before the Tribunal. However, power of postponement does not extend to other matters (like complaints to the local council), and it does not provide for penalties for the landlord or allow compensation for the tenant.
3. People who are protected tenants (that is, who live in premises that are under rent control) will be hardest hit of all. The recommended changes ultimately abolish protected tenancies, and, within four years of the new Act becoming law, protected tenants would be paying more than twice as much as previously, unless they can prove hardship to the Residential Tenancy Tribunal. This will have particularly serious effects for pensioners and people on fixed incomes.
4. The recommendations represent a considerable loss of privacy for tenants. For example, it will be illegal for tenants to have the only key to their home, or to change the locks, unless they can prove to the Residential Tenancies Commissioner that their exclusive possession has been violated "by persistent intrusion of landlord or agent". A tenant may also be required to give the landlord or agent his/her work address and occupation. Recommendations on the landlord's right of entry also need to be tightened.
5. The Report is hard on people who get behind in their rent. It recommends, for example, that where rent is more than a fortnight overdue, seven days' notice to quit may be given, regardless of whether this happens within the period of a lease agreement or during a periodic (week to week) tenancy. We feel that a possible temporary inability to pay rent, particularly in today's economic climate should not be grounds for automatic termination of a tenancy agreement. Loss of income due to retrenchment, unemployment or illness, followed by eviction places tenants in severe hardship through no cause of their own.

6. The Report discriminates against people living in de facto relationships. While the recommendations wisely extend tenants' rights to the married partners of tenants (for example, in the event of a breakup), they exclude de facto partners from such rights. In addition, people who are boarders or lodgers have no rights under the present legislation, and have not been considered in the proposed legislation. This is also true for the increasing number of people who live in group or shared households, where some members of the household have not signed the lease.
7. The changes do nothing to equalise the balance of power between landlord and tenant. The ultimate power of eviction -- that is, loss of one's home -- remains with the landlord, but the recommendations fail to tighten long-outdated penalties for landlords for lockouts or for any other breach of the Act. Nor does the landlord have to justify eviction of tenants once the lease is up, although it is the tenant's home that is at stake, and that in a period of acute housing shortage.

THE TENANTS' UNION'S RESPONSE



The Tenants' Union believes that the recommendations of the Committee are a victory for landlords and pose a serious attack on the security of tenants.

Among the most invidious of the Committee's proposals are the new "streamlined" eviction procedures. Very few tenants will apply to the Court within 7 days after receiving a summons stating that they wish to defend the matter or get an extension of time. Court proceedings are both intimidating and costly. No reason has to be given by a landlord who wishes to evict a tenant once the lease is up. With the looser procedures for serving summons, the first many tenants will know about eviction proceedings is when the police arrive on the doorstep to throw them out.

The net result of pandering to landlord interests will be increased homelessness, unless the Government is prepared to pay the enormous price required to make available more Housing Commission and emergency accommodation.

Another recommendation threatens to deny tenants rights to privacy in their own homes. At present, tenants can change their locks if they feel that their landlord or agent is calling around too often, or entering the premises whilst they are out. However, the right of tenants to retain the only key will be taken away. Tenants will have to prove that their landlord has invaded their privacy before this right is restored.

Protected tenants are even worse hit. The Committee recommends that "rent on controlled premises should be increased by 25% per annum on a compounding basis over 4 years" and then to market rent. This more than doubles the rent over 4 years of many tenants who are generally pensioners. A protected tenant who faces hardship will have to initiate action through the Fair Rents Board. This is the reverse of the present situation, where a landlord who wants a rent increase must take such action.

Tenants had every right to expect that new legislation would at least catch up with other Government initiatives to stop discrimination. This is not the case. Lip-service is paid to discrimination against families with children and other forms of discrimination are entirely ignored.

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A proposal to establish a Residential Tenancy Tribunal to settle disputes over repairs and other matters is one reform which, on the surface, should benefit tenants. However, in practice it will be ineffective because tenants won't complain for fear that the landlord might retaliate and evict them. The Report recommends that Courts be given powers to postpone an eviction order where it is obvious the landlord is retaliating because the tenant sought to raise some matter before the Tribunal. This power to postpone evictions doesn't extend to other matters, e.g. complaints to Local Council. It doesn't provide for penalties or allow for compensation to the tenant. At present, the few rights which tenants legally have are meaningless because of the failure of legislation to face retaliation head on. This will also undermine any new legislation.

The Committee decided not to discuss the position of Boarders and Lodgers who do not even have the small number of rights of tenants.

The Tenants' Union believes that the Government must carefully consider the views of all those people who will be affected most - pensioner groups, single parent families, Women's Refuges, Aboriginal and Ethnic groups, the unemployed - in short, those on low incomes who are most vulnerable to the unscrupulous practices of landlords and real estate agents.

To date, very little publicity has been given to the existence of the Report. People have only two months in which to digest it and respond. This is clearly insufficient time for effective public participation.

The Tenants' Union believes a completely different approach to legislative reform is needed with meaningful tenant participation at all stages.

Write to the Committee. Tell them what you like, what you don't like. Tell them what they have failed to cover and whether you think their "reform" process is adequate.

The Tenants' Union has prepared two carefully argued documents:

- * A brief summary of the Committee's Report; and,
- * A thorough critique of the Committee's Report.

The latter will form the basis of the Tenants' Union's submission to the Committee.

If you would like a copy of either document, ring the office of the Tenants' Union at 698-8033 (between 9am & 1pm) or 699-4741 (between 1pm & 5pm).

WE URGE ALL MEMBERS TO MAKE SUBMISSIONS TO THE REFORM COMMITTEE POINTING OUT THE INADEQUACIES AND SUGGESTING ALTERNATIVES ... a half page letter will do.

WRITE TO THE MINISTER PROTESTING AT THE SHORT TIME AVAILABLE FOR PUBLIC DISCUSSION AND URGING AN EXTENSION OF TIME FOR MORE THOROUGH SUBMISSIONS ... his address is Minister for Consumer Affairs, 1 Oxford Street, Darlinghurst, 2010.

NEW TENANTS' UNION COMMITTEE

Following the Annual General Meeting of the Tenants' Union held on Tuesday, 18th March, 1980, the following people constitute the Board of Directors of the Tenants' Union for 1980:-

Directors - Ian Close, Owen Gager, David Geraghty, Jenny Grey, Regina Haertsch, Martyn Jones, Anthony Kee, David Owen and John Ross.

Alternate Directors - Julie Matthews, Monica Macrae and Lesley Redwin.

The following people are our office bearers:-

Secretary - Regina Haertsch

Treasurer - Martyn Jones

Membership Secretary - Petra Playfair

Publicity Officer - Anthony Kee

Editor - Owen Gager

Stall Organiser - Bev Munro

Chairperson - David Geraghty

Subsequent to the A.G.M. Jenny Grey and John Ross have resigned their positions as a director and these positions are still to be filled.

Much of the Union's work is done by its Committees. These are Management, Publicity (which is responsible for our newsletter) and Policy (which has oversight of our Resourcing Unit for Tenants' Advice Services). These committees always appreciate new blood. If you are interested in joining one of these committees, just leave a message for our Secretary by ringing 698 8033 any Wednesday evening between 6pm and 9pm.

VACANCIES ON TENANTS' UNION BOARD

The Tenants' Union of N.S.W. has two vacancies on its Board of Directors. Volunteers associated with a Tenants' Advice Service or active, concerned tenants are invited to nominate.

The Board of Directors is the Tenants' Unions' "Management Committee". It formulates and carries out policy and generally involves itself in housing and tenancy issues.

The Board meets every third Tuesday evening of the month at 6.30pm. Its next meeting is on 16th September at 118 Regent Street, Redfern.

If you wish to nominate as a director, please notify Regina Haertsch, Hon. Secretary (leave message), or Reyna Dight, Project Officer, at 698-8033 (9am to 1pm only) before the next Board Meeting.

The following Committees also need assistance from members: Management, Policy and Publicity (responsible for newsletter).

We are currently mounting a campaign against certain proposals of the Landlord and Tenant Act Reform Committee which we believe are deleterious to tenants and will lead to severe housing stress.

There is so much to do ... YOUR UNION NEEDS YOU!

RESOURCING UNIT FOR TENANTS' ADVICE SERVICES GETS REFUNDED

The N.S.W. Tenants' Union has been successful in submissions for refunding of its Resourcing Unit for Tenants' Advice Services.

You will remember that we reported in Tenant News No.9, January, 1980 that the Tenants' Union was given a six month grant from the Commonwealth Legal Aid Commission to employ a Project Officer. Her task was to service the needs and expand the network of Tenants' Advice Services run by community groups.

Both the Commonwealth Legal Aid Commission and the N.S.W. Department of Youth and Community Services have made grants for this project for the twelve months ending 30th June, 1981.

TENANTS' RIGHTS MANUAL

This long awaited (and promised) collection of resource material on tenants' rights has been printed and distributed to over 500 groups. These include all Tenants' Advice Services, Neighbourhood and Information Centres, Women's and Youth Refuges, Legal Services, some Ethnic groups, District Offices of the Department of Youth and Community Services and other government and non-government agencies assisting tenants from time to time.

This manual was produced jointly by the Tenants' Union and South Sydney Community Aid. Funds came from the Law Foundation of N.S.W., N.S.W. Department of Youth and Community Services and the Housing Information and Referral Service of N.S.W. Shelter.

TENANCY ISSUES ON AIR

"Into the Streets", a weekly half-hour programme about unemployment on 2SER-FM, is producing in co-operation with the Tenants' Union of N.S.W., a series of programmes dealing with tenancy issues and problems.

It is expected that the programmes will commence at the beginning of October and continue over a number of weeks. Areas to be looked at include rent, bonds, eviction, repairs and legislation.

"Into the Streets" is broadcast each Wednesday evening at 7.15pm on 2SER-FM (107.5MHz).

REDUCED GAS CHARGES

PENSIONERS who produce a pension entitlement card are:

- * only requested to pay a security deposit of \$20 (in lieu of \$30) when they occupy domestic premises as tenants.
- * only required to pay \$7 (in lieu of \$10) where a minimum service charge is applicable.

AGL Company will consider a reasonable request for an extension of time to pay an account in case of hardship.

Reduced Electricity Accounts for ELIGIBLE PENSIONERS

- Age ● War Widow
- Civilian Widow
- Service ● Invalid
- War-Widowed
- Mother ● Special T.P.I.

If you are an SCC customer and in receipt of one of the above classes of pensions you may be eligible for a rebate on electricity accounts.

PATHETIC ATTEMPTS BY REAL ESTATE LICENSING BODY TO CONTROL AGENTS

From 1st September, 1980 there will be new rules of conduct for Real Estate Agents and Auctioneers. Most of these deal with buying and selling of property. However, there are a few which concern relations between Real Estate Agents and tenants.

Theses are:

- * If an owner asks an agent who is managing his or her property to get references from a prospective tenant, the agent must do so. If the references are in writing, the agent must verify them to his or her (the agent's) satisfaction.

NO AVENUE FOR THE TENANT TO CHECK THE INTEGRITY OF THE AGENT !!

- * Just before a tenant moves in and just before he or she moves out, the agent must inspect the property in the tenant's presence, if the tenant is available, and send the tenant a copy of a report detailing the state of repairs and cleanliness of the property and of fixtures, fittings and appliances in it. The agent must keep one copy of the report in his or her office.

AT PRESENT YOU CAN COUNT ON ONE HAND THE NO. OF AGENTS WHO DO THIS EVEN THOUGH IT IS A CONDITION OF THE 1977 R.E.I. LEASE. IT IS ESSENTIAL IN THE EVENT OF A BOND DISPUTE. HOWEVER, NOTHING IS SAID TO ENSURE THAT TENANTS CAN GET REPAIRS DONE.

- * An agent must inspect a property yearly and furnish the owner with a report on its condition.

AGAIN, NOTHING IS SAID ABOUT ACTUALLY REPAIRING PREMISES.

- * If an agent becomes aware that the tenant is not observing a condition of the lease, he or she must tell the owner promptly.

BUT TO WHOM DOES THE TENANT APPEAL WHEN THE AGENT BREACHES THE LEASE?

- * If the rent can be varied by a written agreement between the owner and the tenant, the agent must not tell the owner that he or she must enter into a new lease for this to happen.

WHAT IF THE OWNER WANTS A NEW LEASE? DOES THIS MEAN THAT THE TENANT STILL MUST PAY A FEE FOR AN UNNECESSARY LEASE? TENANTS' UNION POLICY IS THAT FEES ON RESIDENTIAL LEASES SHOULD BE ABOLISHED.

- * An agent must not ask a tenant to sign anything relating to the refund of a rental bond before the end of a lease.

SOME UNSCRUPULOUS AGENTS HAVE RIPPED TENANTS OFF IN THIS WAY, EVEN THOUGH IT IS ILLEGAL UNDER THE RENTAL BOND ACT.



These rules are only concerned about giving protection to the landlord. They do little to improve the position of tenants. Nevertheless, if your agent breaks any of the above rules, you should report him or her immediately to:

The Council for Auctioneers and Agents,
1 Oxford Street,
Darlinghurst, N.S.W., 2010.

However, don't expect too much. Current penalties are a farce. At present an agent can only be fined \$100 for a breach. We all know that in the high finance world of real estate wheeling and dealing, these penalties will not act as a deterrent against unethical practices.

LOOP HOLES STILL WIDE OPEN

Ten housing and tenancy groups, including the N.S.W. Tenants' Union and N.S.W. Shelter feel that the new regulations do not close any of the loop holes which allow agents to speculate or use unethical practices.

Many agents use their inside knowledge to purchase properties on the cheap. They then sell or rent the premises for exorbitant gains, at the expense of tenants and purchasing families alike.

Such action contributes to the inflated housing market facing inner Sydney tenants, resulting in many families being forced onto the streets.

REVIEW OF AUCTIONEERS AND AGENTS ACT

The Auctioneers and Agents Act currently is being reviewed, but this is being done behind closed doors. The Housing and Tenancy Groups demand that any new legislation should be subject to full public debate before it is drafted. The current Chairman of the Council of Auctioneers and Agents, Mr Neville Tucker, is also a past president of the Real Estate Institute. Recently he was appointed as full time chairman to undertake this review. The Housing and Tenancy Groups challenge his independence and his credibility to hold this position, given his previous affiliations.

The groups demand that legislation should prohibit Real Estate Agents from investing in property, either directly or indirectly. They also seek the restructuring of the Council as a body accountable to the public with tenant and other consumer representation, rather than an industry tribunal composed of and elected by the agents themselves.

NOT MUCH REASON FOR HOPE

Unfortunately the past performance of our Minister for Consumer Affairs in placing consumer representatives on statutory bodies doesn't give much reason for hope. Remember the setting up of the Rental Bond Board by the Minister ... it comprises public servants and one other ... you guessed it, a Real Estate Agent. No tenant representative was placed on a Board responsible for administering tenants' money.

FUND RAISING

WANTED ... VOLUNTEERS AND SALEABLE ITEMS FOR STALLS AT COMMUNITY FESTIVALS

There are quite a few important community festivals coming up in October and November. We desperately need good stock such as bric-a-brac, household items, books, records, plants, etc. We also require volunteers to assist on the stalls. At present we have so few people willing to help that we may not be able to go ahead with this important fund raising activity. It also helps to make the Union visible at the local level.

Contact BEV MUNRO on 516-1325 if you can assist with stock or labour.

IS YOUR LEASE UNFAIR?

Where a person enters into a contract for private purposes (including a residential lease) he or she now has the right under the Contracts Review Act, 1980 to apply to a Court for a review of its terms.

If the Court holds the contract to have been unjust in the circumstances relating to the contract at the time it was made, the Court may refuse to enforce any or all of the provisions, or make any order declaring the contract to be void in whole or in part. The Court may also vary in whole or in part any provision of the contract.

The conduct of a person in relation to a contract may also be subject to review, especially at the time the contract is entered into. The Court could intervene and order some form of relief to the consumer.

The legislation took effect on 24th April, 1980 but has no retrospective effect.

What does this mean for tenants?

A tenant who believes that his or her lease or conditions surrounding the signing of that lease are unjust can apply to a court for a review of its terms.

This is applicable to tenants who sign a standard form of lease in which the landlord or Real Estate Agent has made significant changes.

The standard form of lease in most common usage today is the 1977 R.E.I. lease. The Tenants' Union believes that it is harsh and oppressive because it gives the tenant no redress other than termination when the landlord breaches it.

We are looking for a tenant who is prepared to have their lease tested under this new Act. Such a tenant must be at the commencement of a lease for at least six months and prepared to face a retaliatory eviction once its term has expired.

Any takers? Leave message at 698-8033 (9am - 1pm only).

DID YOU KNOW . . . The N.S.W.
Public Solicitor's Office will now
handle the cases of tenants living
in uncontrolled premises who are
eligible for free legal representation.

ANNUAL SUBSCRIPTION NOW DUE

Your Annual Subscription (Service Fee) for 1980 is due if an X appears in the box at the foot of the front page.

Service Fees are:

- \$1 for students, pensioners, unemployed and those on State Welfare;
- \$3 for people who are working; and,
- \$5 for organisations with an income less than \$5,000 p.a. ; and,
- \$15 for organisations with an income of \$5,000 p.a. or more

The Board has power to waive this Service Fee if members indicate hardship.

Please complete the enclosed slip of paper and return it to the Tenants' Union, together with your Annual Subscription.

Scandalous, say tenants, but property owners are happy Mixed reaction to rent proposals

Recommended amendments to the Landlord and Tenants Act, including the phasing out of rent control, are scandalous, the NSW Tenants' Union said yesterday.

The phasing out of protected tenants was completely unacceptable, said the union's director, Mr Owen Gager.

However, the amendments, which amount to a virtual rewriting of the Act, were well received by the Flat and Property Owners' Association, which described them as just.

The changes are recommended by a reform committee set up by the State Government last year.

Issuing the committee's report yesterday, the Minister for Consumer Affairs, Mr Einfeld, said it was not a statement of Government policy.

"I emphasise that the Government does not necessarily accept any or all of the committee's proposals, including those dealing with rents paid by protected tenants," he said.

There is a range of proposals in the report covering landlords' and tenants' rights, the establishment of a form of arbitration and conciliation to settle disputes between tenants and landlords, and streamlining of the present eviction procedures.

The report also recommends that:

Adjustments in rent be permitted only at six-monthly intervals;

Payment of more than one month's rent in advance be prohibited;

A landlord's right of entry to premises be widened; and

The requirements of a landlord to maintain rented premises be tightened.

The most controversial proposals cover protected tenants, and recommend annual 25 per cent increases in their rentals over four years.

Protected tenants are usually low-income earners who have been living in premises, mostly in the inner City, that were rent-controlled by the Act before 1954.

The report says records of the Rent Controller show that in 1976 there were about 30,000 rent-controlled premises in the State, 23,000 of them in the Sydney area.

The committee recommends, however, that in cases of hardship a protected tenant would not have to pay the increase until the case was ruled on by the Fair Rents Board.

Mr Einfeld is believed to have made it clear to the committee that the State Government is not in favour of rent control.

It believed it was virtually unenforceable, and a serious deterrent to investors to provide rental accommodation.

Mr Gager said the NSW Tenants Union considered the report was scandalous.

"It represents an attempt to shrug off the last welfare responsibilities of the private

sector in housing and dump them on the State Housing Commission waiting list, which is already the largest of any State in Australia," he said.

The phasing out was an attack on pensioners in private housing who had been led to believe that they had some security of tenure.

"If the report is accepted they will have to pay rent they can't afford, or be evicted," Mr Gager said.

The recommendations would also speed up eviction of all tenants, particularly those who were not protected.

A proposal that appears to be acceptable to tenants and landlords is the establishment of a form of arbitration and conciliation to rule on disputes between the two.

The Fair Rents Board would become a Residential Tenancies Tribunal operating in city and country areas.

There would also be a Residential Tenancies Commissioner and on payment of \$10 a tenant or landlord could refer a dispute to either the commissioner or tribunal for resolution.

A recommendation strongly opposed by the tenants' union is that, subject to certain safeguards, the landlord should retain a key to the rented premises.

The report also recommends that tenancy should not be refused to people with children unless there are exceptional factors.

Victoria

TENANCY LAW REFORM

The Residential Tenancies Bill, which was tabled in Parliament just before Christmas, makes a mockery of the Liberal Government's promise to consider community views on tenancy. The bill has rejected nearly all the 50 recommendations made by various community groups, and the main initiatives of the original draft have been largely diluted.

To pick out a few of the major areas of concern:

- bonds have not been abolished;
- rents may be increased six-monthly, with tenants being entitled to 30 days notice of the increase (the previous bill stipulated annual increases as a minimum with a 60-day notification period);
- tenants will be required to give 28 days notice of their intention to vacate instead of the 14 days proposed originally;
- tenants *still* have no security of tenure as they can be evicted without cause or reason on four months' notice (previously six months).

The community group committee says that, in all, the revised bill contains 65 amendments biased in favour of landlords. Concern is shown over the clauses covering discrimination — landlords found to have discriminated against tenants with children will be fined \$200 instead of \$1000, and it will be much more difficult for tenants to prove that discrimination has occurred. The bill provides a defence for landlords refusing accommodation to families; if, in the landlord's opinion, the residence or its design is unsuitable or the property has two bedrooms or less there is no obligation on the landlord to let the property. (This effectively exempts the majority of flats from the ambit of the anti-discrimination clause).

The autumn session of parliament promises to be a fiery one.

Press clipping, SMH 24/7/80 p11

Legal Serv. Bull.
Vol 5 No 1 Feb '80
p 36