

tenant NEWS

The newsletter of the Tenants Union of NSW

No. 61 January 1998

Rentwatchers and the Olympics



by Mary Flaskas for RENTWATCHERS

Landlords go for gold

The race is on...as Sydney plans for the year 2000, the designing of flower beds and the choosing of toilet designs reaches peak priority. Meanwhile, many landlords prepare for profits. There's promise of up to \$14,000 per week to be made on available properties; the stakes are high.

And bets are on as to who'll be winning that little race...

But wait, rounding the corner and close behind are those rabble-rousing ratbags of housing justice, fighting for the rights of tenants, boarders and lodgers, caught on the receiving end of the Olympics, RENTWATCHERS...

Yes, it's true, what started off as a small spark on an insomniacal night last year, has become the shining path for those concerned about a crazy logic

that says "Profits for some do not necessarily mean Poverty and Homelessness for others". And, like a beacon in the night, the campaign for adequate and affordable housing, powers on...

RENTWATCHERS stage demo

After a successful demonstration outside the NCOSS conference, 'Living in an Olympic State', during mid-November, RENTWATCHERS managed to grab the attention of the Minister for the Olympics, Michael Knight, (as well as the camera crews lurking in the vicinity).

This led to a joint meeting of Ministers in late November, attended by Michael Knight and the then Minister for Fair Trading, Fay Lo Po where RENTWATCHERS raised their concerns about the impact of the Olympics on

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FREE!

Welcome to Tenants News

Welcome to 1998 and to a new look for Tenants News. You'll notice that this issue has changes to both its format and range of content. We've gone to a newsprint version which allows us to print many more copies for the same price...so we can distribute *Tenants News* to a wider audience across NSW. Thanks to the network of Tenants Advice and Advocacy Services and volunteers around the state who are helping distribute Tenants News to many more tenants than ever before.

1997 was an active year with several significant legal cases that clarified points of law and extended tenants rights. On of our major projects, the Tenants Advice and Advocacy Program was successfully evaluated and received expanded support from the Rental Bond Board and the Department of Fair Trading. We currently have input into the review of tenancy legislation in NSW and in 1998 we'll continue to campaign for extend tenants rights and to protect tenants during the Olympics. We welcome feedback and contributions to Tenants News and involvement in our ongoing campaigns.

Nicholas Warren, Chair

About the Tenants' Union

The Tenants' Union of NSW promotes the interests of tenants, including boarders and caravan park residents. Since 1976 we have fought for fairer laws and have worked to let tenants know about their rights. We welcome your involvement and membership. *Tenant News* is our regular publication.

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The views expressed in here do not necessarily reflect those of the editors, or Tenants' Union staff.

Blacklisted: Why 75,000 won't find a place to rent

by Evan Mistilis (reprinted from City Hub)

Julie Minter has a good record as a tenant, but her name ended up on a blacklist designed to stop her finding a home to rent in Australia. After two months of searching, Julie finally found a house to rent in Windsor, but her application was rejected because she was listed with the Tenancy Information Centre of Australia (TICA) along with 75,000 other 'bad' tenants.

Julie had done nothing wrong. Her name was listed because she has the same name as a woman who allegedly caused \$2,000 damage to a rental home in Werrington in 1994.

Julie was angry when she discovered her name was on the TICA database. "My credibility was at stake. I wasn't going to sit still and have this thing going around," she says.

TICA does not guard against mistaken identity, even though there are 75,000 people on its blacklist. On each entry for a tenant, there is room to record the person's date of birth and driver's licence number, but TICA is happy to list only a name to identify a 'defaulted' tenant.

Guilty until proven innocent

TICA refused to take Julie's name off their database, even though the listing does not distinguish between the 'bad' tenant and at least two people in NSW with the same name. Instead, TICA told Julie to gather evidence that she was not the same person who was blacklisted.

"TICA was saying that I had to get details—copies of leases, all sorts of weird and wonderful things—from the agent I was renting from in Queensland in 1991," says Julie.

Since she is now living in Sydney, she knew this would be difficult and costly. Instead, Julie tried to find the real estate agent who put her name on the database. "I was told by TICA that if I wanted any details removed I would have to have it done by the person who lodged the application," she says.

However, this real estate agency, in Werrington, had since gone out of business. Julie tried to track down the staff who had worked there by phoning other agencies in the area.

Says Julie, "It was phone call after phone call, all to prove my own innocence. I finally got the name of the girl I had to speak to, but trying to get onto her was like hitting a brick wall. I tried for quite a few days, never getting

a returned call. Eventually I got onto her, and she said that if I don't recognise you I'll type up a letter... confirming that 'the bearer of this letter' is not the person listed with TICA".

Don't tell me I'm-blacklisted

Over 1.5 million tenants have signed a lease with a real estate agency that passes on information to the Tenancy Information Centre of Australia (TICA), a private company that keeps the names of only 'bad' tenants on a computer database.

TICA cannot even guarantee that their bad tenant database is accurate. A spokesperson for TICA said that real estate agents are responsible for the information gathered on tenants.

There is no legal obligation for real estate agents even to tell you that you are blacklisted. The companies that own the databases say you must write to them if you want to find out what is on your file.

David Ramsay, the Policy Officer for the Tenants Union says that few people would realise that they are listed as a 'bad' tenant on a central computer.

"When people are knocked back ten or fifteen times by real estate agents, they start to wonder what's going on. It may be due to the fact they're listed. People don't know these organisations exist," he says.

There is no easy way to find every company database on tenants. Half of Australia's 7,000 real estate agents subscribe to TICA, according to TICA's own figures. But other companies have also started tenancy databases include EAC Multilist, RP Data and Remington White.

None of these companies are regulated by the government, or endorsed by the industry body, the Real Estate Institute of Australia.

A spokesperson for TICA said, "We've had a lot of criticism thrown at us by the do-gooders of Australia... not one thinks of the poor Aussie battlers who have bought a property for retirement and want to protect their investment."

In defence of the database, the TICA spokesperson claimed that the worst of the 75,000 bad tenants on the TICA database were responsible for \$75 million in lost rent and damage to property.

Real estate agents might argue that such expensive tenants do not deserve housing. But does the sentence fit the

"There is no legal obligation for real estate agents even to tell you that you are blacklisted."

crime? While a few days in jail will pay off hundreds of dollars worth of parking fines, if you move out while owing the same amount of money to a real estate agent, your name could be listed with TICA for the rest of your life.

And while a jail sentence can only be imposed by a court, a listing on a bad tenant database—which could leave you homeless—can be imposed by the real estate industry, without any appeal to an independent umpire.

The need for Regulation

While credit referencing databases are strictly regulated, only the law of defamation applies to tenant databases. But Legal Aid will not pay for a defamation case, and tenants who are listed as a bad risk would hardly afford a costly defamation suit to get themselves off the database.

The then Federal Privacy Commissioner, Mr Kevin O'Connor, said last year that the tenant databases "highlight crucial gaps in the coverage of privacy laws."

O'Connor wrote in his 1996 annual report, "because such databases can determine access to accommodation, a basic human entitlement, the information arguably deserves a greater level of protection than some other areas. The Commissioner will continue to monitor developments in this area with great interest."

Even some who run tenancy databases can see the need for regulation. The Chief Executive of EAC Multilist, Mr John Carson, said that he had begun talks to the NSW Privacy Committee, and that EAC Multilist would be happy to discuss a code of conduct for the industry.

The Lobbying has begun

The Tenants Union has started lobbying for regulation. Said David Ramsay, "We've written letters to the Minister for Fair Trading, we've met and made representations to the NSW Privacy Committee, we've written and produced submissions to the Federal Attorney General's Department on this issue, and we've lobbied the previous Federal Government, without action... [except for] encouraging moves from the NSW Privacy Committee."

"We believe that if people are going to be listed at all, there has to be a breach that is proven by the Residential Tenancies Tribunal, rather than an arbitrary decision by a landlord that can be done vindictively, or as a retaliatory measure for a win at the Tribunal."

"It's unregulated. There's a lot of really dodgy practices going on," says Ramsay. "People are loathe to pursue their rights in the Tribunal, because people are listed for the simple fact that they have challenged their rights in the Tribunal and won a case... the victory in the Tribunal is only a hollow victory because down the track they're listed. It undermines the whole access to housing justice." ■



Dear Shirley...

Shirley is everyone's confidant at the Tenants Union and when you are doing a Hotline roster you can be sure Shirley is there under the desk listening and offering support. Send your letters to Dear Shirley, Tenants Union 68 Bettington St Millers Point 2000

Dear Shirley,

I've just met this hot babe, everything seems perfect, she rents a great flat near the beach and wow, she has asked me to move in with her. I wanna do this real quick but I've got four months left on the lease I've got now. I can't afford two sets of rent and want to be with my gorgeous girl. Someone told me the landlord could sue me for breach of contract or something if I try to break the lease. Help!

Signed, Hopelessly in love, Caringbah.

Dear Hopelessly in love,

Calm down, there is a solution, and there is a way to keep the costs down. You can end the agreement by consent of your landlord. Usually the consent of the landlord is conditional on payment of the landlord's expenses in finding and installing a new tenant. The landlord's expenses should be discounted according to the proportion of the agreement that is left to go. You can offer to advertise the place to find another tenant, and this need not cost you as much as if the landlord does it. If your landlord does not use a Real Estate Agent the cost to you will be less because the Agent's fee for reletting is not an expense. You will be liable for rent until a new tenant is found.

If the landlord will not give consent and you must leave the place, you can give notice that you are leaving and raise the issue of the landlords duty to mitigate their loss caused by your breach of the agreement. To mitigate the loss the landlord must get to work on reducing the overall loss as soon as you move out. Our local tenants service can supply you with a sample letter. You will be liable to pay the landlord's expenses in finding a new tenant. You should also be aware that if the landlord can't rent the premises at the same price and has to reduce the rent, you will be liable to pay the difference for the four months left to run on your agreement.

You should deal with your landlord in writing so that what happens is recorded. If you make an agreement it should be in writing. When you leave make sure that the place is in good order. If you expect dispute then take photos before you give the keys back. The condition report should be filled out by you and the landlord (or agent) when you move out or shortly afterwards. Get help from your local tenants advice service if necessary.

Dear Shirley,

My partner and I rent a kitsch yet fabulously retro flat in a large block of sixties style units, all of which have balconies. On Saturday afternoons there is nothing we love better than doing up old furniture on the balcony we find in op shops, using our power tools. After which we then love to roll around naked on the balcony in the saw dust making wild passionate love. However, lately our neighbours have started to complain about our Saturday activities and have threatened to have us evicted by the landlord.

Signed, Sanding Back and Sawing Down, Leichhardt.

Dear Sanding Back and Sawing Down,

If this is a strata title block you may need to find out if the balcony is actually common property. Some structures out of the confines of the unit are actually common property and you merely have a right to sole use of it. There maybe restrictions on what you can actually do on common property. Ask for a copy of the Owners Corporation By Laws to check this out.

But if it isn't common property you can probably use your power tools, so long as you do this in a reasonable manner and not before 8am and not after 8pm. Once again, check the By Laws. Power tools can be noisy, annoying and stress provoking for some people so use them with some level of thought for your neighbours.

With regard to your love making, once again, check the By Laws. Bonking on the balcony can be noisy, annoying and stress provoking for some people. It may actually say something in the By Laws about nudity or acts that cause embarrassment to neighbours by them being exposed to your sex life and naked bods. You maybe breaking the By Laws if you are causing embarrassment to your neighbours.

Also, it could be suggested that if either you or your partner are noisier than a power sander and you are up to the rooty tooty after 8pm, well you may have to keep it down. But, basically, I reckon if you and your partner are consenting adults, you are not causing noise, nuisance or embarrassment to your neighbours then go for it! The regulations under the Noise Control Act may also be relevant. Apart from Strata By Laws and the Noise Control Act regulations, you have agreed in your Residential Tenancies Agreement that you will not cause or permit a nuisance or interfere with the peace comfort or privacy of your neighbours. Don't make them too jealous or they may lobby your landlord to take action against you in the Residential Tenancies Tribunal.

Safe as Houses: Domestic violence and tenancy law in NSW

by Kylie Kilgour

The impact of domestic violence on women's housing choices and housing security cannot be underestimated. Each day women face choices that may leave them homeless, paying more rent than they can afford, living in substandard accommodation or giving up their bond money—all as a result of violence in their home.

A new project and publication

The Safe as Houses project arose as a result of the number of enquiries from tenants in domestic violence situations and involves training and a new publication.

The new publication, published in September, aims to give women experiencing domestic violence a better understanding of their housing rights. In addition, there is a training manual and five pilot training sessions have already been conducted in Sydney, Parramatta, Wollongong and Dubbo.

This is a project of Canterbury Bankstown Migrant Resource Centre, and is being conducted by Redfern Legal Centre. Funding has been provided by the Department of Fair Trading.

The need for law reform

Law reform to assist women to escape domestic violence is urgently needed. Housing law reform as a feminist issue is still in its early stages in comparison to domestic violence, sexual assault and family law reform.

Yet the connection between women's experience of domestic violence and the need for better laws to assist women to access safe and secure shelter is alarmingly obvious.

For example, it is still the case that magistrates are reluctant to grant exclusion orders as part of Apprehended Violence Orders if the defendant's property/tenancy rights status is superior to the complainant's.

Broadly what the law needs to do is:

1. Give the Tribunal jurisdiction to vest a tenancy in a person who is the target of domestic violence, so that the perpetrator can be excluded, irrespective of their tenancy status.
2. Give the tenant grounds to apply to the Tribunal for termination for "excessive hardship". There are currently grounds for a landlord to make such an application, but not a tenant!
3. Give the Tribunal jurisdiction to make orders terminating a tenancy where there has been domestic violence. These provisions could work in tandem with orders vesting the tenancy in the target of domestic violence. Alternatively they could be used to end a tenancy, thus ending the legal liabilities for rent arrears and damage which often trail women around for ages after they've fled a violent home.
4. Stop women from being responsible for damage arising from a domestic violence perpetrator's actions.

These are the draft amendments which are being considered by the Tenancy Legal Working Party for incorporation in their model *Residential Tenancies Act*.

Government policy

Rental Bond Board

There is a need for better procedures when a woman can't get her share of the bond after she has fled violence, as at the moment the Rental Bond Board can't release part of the bond.

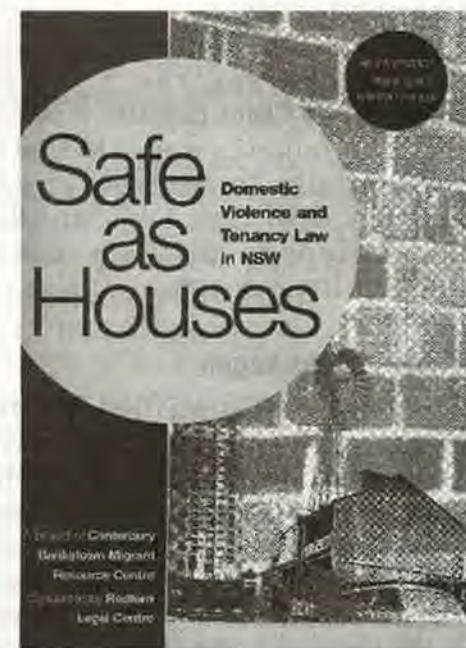
A project looking at options for amendment of the *Landlord and Tenant (Rental Bonds) Act 1977* to deal with this situation may be useful.

Department of Housing

It would also be useful to do a review of the Department of Housing's policies with respect to domestic violence, and other forms of harassment eg. rehousing after discrimination/threats to single mothers on housing estates, rental assistance for women fleeing violence, emergency housing programs, and community housing initiatives for women fleeing violence.

For example, current policies about women's responsibility for damage to the premises caused by a perpetrator are problematic. Women also often report problems getting approval for rent assistance, housing and rehousing.

For further information, or to order a copy of "Safe as Houses" contact the Redfern Legal Centre on 02 9698 7277 during office hours. ■



Tenants Union joins Privacy Boycott

by David Ramsay

Regular readers of *Tenants News* will be aware of our concerns regarding the operations and practices of tenant database (or tenant black list) organisations (see article in this issue). Over the past year we have collected evidence and case studies of numerous examples of the abuses perpetrated by some of these private organisations. We strongly support tight regulation of this sector. We support enforceable Australia wide privacy legislation that

covers tenant listing agencies. The Federal government has gone soft on this issue, and moved away from its position of preferring regulation, one that it held before the federal election.

The Federal Privacy Commission has produced a voluntary code at the request of the Prime Minister, John Howard, who said that his government would not introduce legislation that forces private enterprise to comply with privacy principles. He also cited cost to

business as a major concern in his move away from a regulative response.

The Tenants Union along with other groups including the Australian Consumers Association, the Public Interest Advocacy Centre (PIAC), Communications Law Centre, Australian Privacy Foundation, Council of Civil Liberties and the Consumers Federation of Australia will not be participating in the development of a voluntary self regulatory approach to addressing the need for privacy protection in the private sector.

In light of no effective national legislation, the Tenants Union will be pursuing State based approaches to regulation with the NSW Privacy Committee and the Department of Fair Trading. *Tenant News* will keep you posted on developments. ■

Rentwatchers and the Olympics

(continued from page 1)

the housing situation in Sydney.

Ministerial Sub committee established

A joint Ministerial Sub-Committee has been set up to look at the issues surrounding homelessness, emergency housing and private rental in the lead up to the Games.

RENTWATCHERS will also be contacting the new Minister for Fair Trading, Brian Langton, and look forward to working with him in the future.

Phone-in

RENTWATCHERS then proceeded to organise a state-wide phone-in, held on December 4, inviting tenants to ring in with their rent increase 'experiences'. Callers were asked about how their current rental situations impacted on their lives and what they anticipated would be happening in the near future.

The results of the phone-in are being compiled and will be released in February/March 1998. The group plans to hold a number of these phone-ins, as a way to chart public reaction to the changes in the housing market, as the year 2000 approaches.

There's plenty more planned for 1998, so stay tuned. And remember, if you do not yet have a New Years' resolution, you can always choose to get involved in a worthwhile cause. Who're you gonna call? RENTWATCHERS on 02 9698 5975. ■

Senator's silly proposal

by David Ramsay



In October last year, Senator Jocelyn Newman, Federal Minister for Social Security, put forward the following proposal to a Canberra Real Estate Conference regarding the direct deduction of rent from Social Security Benefits to real estate agents:

"such direct deductions... have enormous potential to assist tenants to meet their obligations and maintain their tenancy as well as relieving tenancy managers of the problems associated with default.... It is often alleged that low income people are discriminated against in the private rental market and to the extent that that is true, this is a measure that may be able to reduce that problem... It may

give confidence to landlords to rent properties to tenants they might otherwise reject"

The Senator went on to state, "the only stumbling block to introducing an efficient and affordable direct payment scheme was the multitude of landlords and real estate agents operating in the private sector ..this is not a problem in the public sector because it is controlled by just a handful of government approved landlords (sic)... I don't know how it could work because of the multiplicity of landlords. That's the only thing stopping it for the moment, but I challenge them (the industry) to come up with a suggestion on how we can best organise it together."

Nice try Senator!

But it would divert substantial departmental resources to approve of and track landlords and tenants and arrange direct debit payments, particularly when most leases in Sydney are currently six months.

Such a scheme would positively identify prospective tenants as benefit recipients which often works against a tenant's access to housing.

It would conflict with NSW tenancy law by denying the Residential Tenancies Tribunal the ability to make an order that the rent be paid into the tribunal's trust account where there has been a substantial breach by the landlord.

There will be little incentive for landlords to participate in this scheme which offers no real assistance to tenants and is no substitute for Federal government policies that ensure a commitment to secure affordable housing. If the Minister is concerned with people's ability to pay rent then income support and restraint of extraordinary rent increases well above CPI, would be a better contribution. ■

Summer's here and so is the vermin

Summer's here which means hot weather and cockroaches, fleas, ants, mice and other vermin. What can you do? In this extract from the *Tenants Rights Manual*, we explain:

Work out who is responsible

It's clear that it's the responsibility of the landlord to ensure the premises are free of vermin when you move in. But after the tenancy begins the responsibility for getting rid of vermin depends on the situation.

For instance, if you have not cleaned the premises regularly and a cockroach infestation begins it is likely the Residential Tenancies Tribunal will say you are responsible. But an infestation of lice or mice might be the responsibility of the landlord.

If you are unsure about whose responsibility it is to get rid of vermin you should get further advice from your local Tenants' Advice and Advocacy Service. (See page 8 for your closest service)

White ant and termites are the responsibility of the landlord. But pest removal often involves toxic procedures and you should get advice and check the credentials of the exterminators. A

medical certificate from an appropriate health professional may assist negotiation with the landlord.

Getting your landlord to get rid of the vermin

If you've approached the landlord or real estate agent and you are still having



problems getting the landlord to get rid of vermin you can:

1. Approach your local council's health and building department. Some local councils will spray a pensioner's premises for no cost. An approach

from the local council can embarrass the landlord to take action. The local council has powers under the *Local Government Act 1993* to serve a notice on the landlord to get rid of the vermin.

2. Contact the landlord and explain the problem if you are dealing with the real estate agent and getting nowhere.
3. Apply to the Residential Tenancies Tribunal for an order to carry out a term of the residential tenancies agreement.

What if your vermin is caused by neighbours?

If you are having problems because of the vermin control procedures of a neighbour you may need to approach them. Your local council may also be able to help. You may need to use a mediation service like the Community Justice Centre.

Under section 26 of the Residential Tenancies Act, you must keep the premises in a reasonable state of cleanliness. The responsibility of the landlord is to provide and maintain the premises in a 'reasonable' state of cleanliness and fit for habitation by the tenant [s.25]. ■

Rent Regulation can work

Source: Global Tenant (International Union of Tenants' publication)



It works in New York

There is still rent control in one of the biggest Cities in the World—New York, enabling 2.7 million inhabitants to have a rent lower than that delivered by market forces. In New York as in many other cities in the United States there has been rent control since the second world war.

Rent regulation as established in 1943 by the US Government, in 1950 it became the responsibilities of the state when New

York State enacted rent control for pre-1947 buildings to replace the Federal controls that were being phased out.

In 1962 the State legislature enacted the Emergency Housing Act, transferring the administration of rent regulation within NYC to the Mayor and City Council.

Some years later (1969) the Rent Stabilisation Laws for buildings constructed between 1947 and 1968 was enacted. A Rent Stabilisation Board charged with administering the system and moves were made to industry self regulation. In 1972 an annual increase 7.5 per cent became the ceiling for rent increases. In 1974 the rent stabilisation for post-1947 buildings was enlarged again and some pre-1974 buildings were included.

During the 1980 these laws were weakened and in 1997 they were set to expire! This did not happen.

According to Timothy Collins, Assistant Attorney General, Real Estate Financing Bureau 1994-95, the correction of market imbalances is a practice that is over 500 years old. The English Parliament established regulated prices for essentials such as bread, meat and housing and lodgings in the 1400s.

In the American colonies similar laws followed, some lasting long after the American Revolution. In America in the post war period rent regulations have gone up or down, been extended or deleted, but still there remains two forms of rent regulation—rent control and rent stabilisation.

It works in Hong Kong

Like New York, rent regulation in Hong Kong was expected to end in 1997—this also failed to happen. After a lot of criticism of rent regulation by the Hong Kong real estate industry the regulation of older buildings has been extended for two more years. The deadline has been postponed to January 1, 1999. This means that 110,000 tenants will continue to be protected. Under these regulations, landlords of 33,400 premises can increase rents up to 30 per cent over two years or up to 90 per cent of the market rate. ■

(Ed: It must also be noted that security of tenure is much stronger in both New York and Hong Kong than it is in NSW).

More people homeless

Source: Sydney Morning Herald, 12/11/97

The number of homeless Australians has increased by 50 per cent since 1985. The figures are based on comparisons of major surveys. The work was carried out by Ecumenical Housing Inc. The figures also show that 575,000 Australians in the private rental market lived in poverty after they paid housing costs. The report highlighted that in the past 12 months rents had risen much more than the inflation rate (9.4 percent growth in Sydney) and that vacancy rates were well below the 3 per cent level considered by Ecumenical Housing Inc to be the appropriate level.

Also highlighted was the fact that 70 per cent of low income tenants in Australia paid more than 30 per cent of their income on rent.

The director of Ecumenical Housing Inc, Hal Bisset, said "The churches were concerned about the declining commitment of Commonwealth and State governments to public housing."

He went on to state, "The churches have to care for the homeless and people struggling in the private rental market. Governments' faith in the market is not matched by the churches' experience" Mr Bisset said the Federal Government had walked away from the housing reform process begun under Labor. ■

Senate Inquiry into Housing Assistance Reports!

The Senate Inquiry into Housing Assistance has finally handed down its report and it contains good news for tenants

The Tenants Union has been active in submitting to the Inquiry and giving evidence at the public hearings.

The report is quite critical of the current directions of federal housing policy and takes on many of the responses of the community sector in its recommendations. We welcome many of the recommendations and seek greater detail on others. The key recommendations of the report include the following:

1. Wider data collection in relation to housing, in particular the private rental market.
2. The provision of public and community housing remaining a joint Commonwealth/State responsibility.
3. The continuation of the Commonwealth State Housing

Agreement and a new agreement in 1999.

4. The commonwealth provides capital funds for public housing to ensure stock is **at least 6 per cent** of all housing stock.
5. A review of the 1997 budget decision to reduce rent assistance for people in share housing.
6. The Commonwealth consider the possibility of using a region based formula for Rent Assistance payments. (If enacted this would be good news for Sydney renters)
7. The Department of Social Security consider ways of improving affordability for low income renters in private rental.
8. The Department of Social Security make use of the Internet or other online services to ensure that tenants and other community groups are better informed about tenant rights.
9. State and Territory governments

provide better support for tenancy services, especially in rural areas.

10. That, as part of the COAG process, the Commonwealth negotiate agreed standards of consumer protection for tenants with the States with the objective of legislation being enacted in each State.
11. That the States and Territories consider introducing regulatory measures in relation to bad tenants databases to protect the privacy rights of tenants and that any extension of the Commonwealths Privacy Act 1998 to the private sector should contemplate the above circumstances.

There are 24 recommendations in total many relating to indigenous housing and encouraging the private sector to invest in housing for low income people. We await the Governments response. ■

Crackdown on Rental Rebate 'Frauds'

by Harvey Volke

The Department of Housing is cracking down on tenants it regards as guilty of rental rebate fraud.

Where it believes they are guilty, the Department is cancelling tenants' rental rebates from when they began their tenancy—leading to formal rental debts of between \$20,000 and \$40,000. Often enough, it terminates their tenancy as a result.

These are cases where the Department has concluded that tenants have had additional people living with them and have not declared their income in rental rebate applications.

Significant increase in cases

In the last couple of months, at least several tenants' advice and advocacy services have had significant numbers of people coming to them who have been subjected to this procedure.

They have also told of harassment

and intimidation in interviews by officers of the Department's Investigation and Review Unit. In at least one case, a tenant claims, an officer gained entry to the premises by deception, claiming the visit was for "a 12-month inspection". In another case, a tenant says she was told her relatives could be charged and sent to gaol.

In a further case the Department claimed to have evidence that a tenant was living with a de facto husband. In fact he was her stepfather, he was terminally ill and bedridden, and was living with her mother in another DOH house. He had lent the stepdaughter his car, so it was parked at her property.

In these situations the Investigations and Review Unit places the onus on tenants to prove they are not guilty. It does this on the basis that the tenants have given it the right to check their household income.

Tenants must prove innocence

Unless they can prove their innocence, they are likely to have their rebates cancelled from the time they began—hence the accumulation of huge sums of debt arising from rent calculated at market rates. The sums are so vast that low-income people have no chance of ever paying them off.

And this is despite the fact that the Department concedes it does not know the full income details for the full period. In its letters to tenants, it says "As the full income details are not known at this stage, the debt should be assessed on the full market rent being charged from ..."

If the Department were to pursue the tenants through the courts, there is every likelihood they would be bankrupted, and there would be no prospect of debt recovery. In addition, it makes any possibility of ever being able to return to DOH housing problematical, to say the least, though applicants' circumstances can still be taken into account.

What is troubling is that the activities of the Investigation and Review Unit may well need investigation and review themselves, to ensure that tenants are not being denied natural justice. ■

Tribunal Discretion in Fast Track Terminations

The Supreme Court handed down its decision in the matter of *The New South Wales Land and Housing Corporation v Green (Green)* on 31 October 1997.

In mid-1995 the Department of Housing (the Department) applied to the Residential Tenancies Tribunal for an order of termination ending Ms Green's tenancy agreement. The application was commenced pursuant to section 68 of the Residential Tenancies Act 1987 (the Act.) Section 68 is a fast track mechanism whereby if a tenant causes or is likely to cause "injury" to the landlord, agent or neighbour or alternatively causes or is likely to cause damage to their own premises the landlord can apply immediately to the Tribunal for an order of termination. There is no requirement for a notice of termination to be served in respect of section 68 applications.

The Tribunal found on the evidence the tenant had caused an "injury" to a neighbour. However the Tribunal member then exercised his discretion and refused to terminate the agreement after considering all the circumstances

of the case. The tenant was represented by Tenants' Union solicitor Jennifer Conley in those proceedings.

The Department appealed the Tribunal decision to the Supreme Court. The Tenants' Union continued to act for the tenant in those proceedings, and instructing solicitor Jennifer Conley briefed Chris Ronalds of Counsel.

In the Supreme Court the Department argued the Tribunal had made an error of law. Firstly they argued, there was no discretion to be found within section 68: if the person applying for the order established their grounds the Tribunal was bound to make the order. Alternatively it was argued, if there was a discretion, then the Tribunal took account of an irrelevant consideration when exercising that discretion, namely the Department of Housing relocation policy.

Central to the case was the question of the interpretation of section 68 (1) of the Act,

"The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order terminating the agreement if it is satisfied..."

The critical issue was, did the use of the word "may" give the Tribunal a discretion to make the order. The Department argued it did not. "May" they said was a provision that merely allowed the Tribunal, or gave the Tribunal the power to make the order if certain preconditions were met.

The court found the Tribunal had the

power to make the order on the exercise of discretion. In reaching that decision it considered how ludicrous and unfair the operation of the provision would be if there were not such a discretion. The court considered the consequences of the most minor "injury" for example a bruising caused by an act of recklessness. If there were no discretion then an order of termination would be mandatory in these circumstances. The court found it was clear when considering the wording of the section and the Act as a whole, and the effect of the section which can cause considerable hardship that Parliament intended the Tribunal to have a discretion to make such orders.

The court then went on to consider whether the Tribunal member took account of an irrelevant consideration when exercising his discretion. It was found that the Department's relocation policy was a relevant consideration.

This is an important decision for tenants in circumstances where no notice of termination is required. Tenants usually first become aware of the threat of eviction when they receive the notice of hearing days before facing proceedings in the Tribunal. The consequences of termination under section 68 are extremely harsh.

The Supreme Court has confirmed that the Tribunal has a discretion whether or not to make an order of termination. However if the Tribunal does make an order of termination, the order must give vacant possession immediately. ■



Tenants Have Rights!

How to avoid problems

- ☒ Start by reading your residential tenancy agreement. Get some help if you can't understand it.
- ☒ Tell your landlord, or the landlord's agent, about any problems and tell them what you want. You should confirm anything you agree to in writing and to send your landlord a copy.
- ☒ Remember that the agent works for the landlord.
- ☒ Keep a written record of what happens between you and your landlord or agent, including what each of you said and when.
- ☒ Keep copies of your:
 - Residential Tenancy Agreement
 - Condition Report
 - receipts for rent and bond money
 - all letters and written records.
- ☒ Never sign a blank form or any papers you don't understand.
- ☒ If you receive notice of a Tribunal hearing you should always attend.
- ☒ Remember that if you stop paying rent you can be asked to leave. Rent strikes do not work.

For more help

Contact your local Tenants Advice and Advocacy Service. Workers will be happy to call you back if you live out of the area.

Inner Sydney

02 9698 5975

Inner Western Sydney

02 9559 2899

Southern Sydney TAAS

02 9787 4679

South West Sydney

02 9601 6577

Eastern Suburbs Tenants Service

02 9386 9147

Western Sydney Tenants service

02 9891 6377

Northern Sydney

02 9964 9654

Central Coast TAAS

02 4353 5515

Hunter TAAS

02 4929 6888

Illawarra/South coast

02 4274 3475

North Coast TAAS

1800 649 135

North Western NSW

1800 642 609

South Western NSW

1800 642 609

Aged Tenants Service

1800 451 488

Aboriginal Services

Western NSW

1800 810 233

Southern NSW

1800 672 185

Northern NSW

1800 248 913

Greater Sydney

02 9690 0020

Your landlord can't evict you—only the Residential Tenancies Tribunal can do this.

Tenants' Union Hotline
Ph: (02) 9251 6590

Phone advice:
Mon-Fri 9.30am-1pm and 2-5pm

Get a new lease on life... join the Tenants' Union!

YES I want to join the Tenants' Union of NSW

Name

Address

Postcode

Telephone [h] [w]

First language

Please tick ☐ New membership .. ☐ Renewal

Are you a: ☐ Tenant ☐ Home Owner ☐ Other [specify]

Fees

Membership runs from 1 January to 31 December. New members can pay half fees after 30 June. New membership fee includes cost of share[s].

Yearly Fee: Tick the fee that applies

No (or low) wage/pension/benefit **\$8**

Waged worker **\$15**

Organisations **\$30**

Donation \$

I enclose \$

Signature

Date

Return to: Tenants' Union, 68 Bettington Street, Millers Point 2000

Office Use Only

Service Fee Shares

Donation

Receipt No Membership No

