15 December 2022

CBS Reforms
Consumer and Business Services

Discussion Paper – Review of the Residential Tenancies Act

In response to the Discussion paper I submit the following for consideration.

1. Longer Tenancies

Prescribed reasons for termination and non-renewal

Regarding the proposal for longer tenancies, the industry rightfully has some concerns with the suggestion.

The requirement to provide reasons to end a tenancy agreement at its natural conclusion adds to the bias against landlords and ties the hands of Property Managers.

It may also create a bias against many tenants when applying for properties. These requirements would cause Landlords to look for even more reasons not to approve a tenant to live in their rental property for fear of being unable to end their tenancy easily. It is common for tenants to be approved for a lease where the Landlord is not entirely sure that they are the right fit but is happy to 'give them a chance' for six months and then look at extending the lease after that. Prescribed reasons for non-renewal would make landlords wary of this option and thereby disadvantage many tenants when finding suitable housing.

Prescribed reasons for termination would also increase the day-to-day issues for the Property Management industry, specifically concerning protection from abusive tenants. Currently, Property Managers are given very little protection from abuse. While threats to life may be reported to the police, it is not uncommon for Property Managers to be forced to tolerate significant abuse in the workplace. This leads to severe mental health issues and burnout. In a recent national survey, 53% of Property Managers said managing their mental health was their biggest issue. In addition, 52% said that dealing with aggressive or abusive landlords and tenants was another major issue.

There is a shortage of skilled Property Managers within the industry and a very real exodus of experienced professionals whom we need in the role. It is common for Property Managers to be intimidated by tenants and require additional support during inspections. In many cases, and often driven by fear, the Property Managers view the best outcome is to avoid further inflaming the situation and merely tolerate the tenant until the end of the tenancy. The prescribed reasons for termination place the Property Managers at risk, both physically and mentally, and the ramifications will be significant.

This resolution to continue to the end of the tenancy is a coping strategy to help the Property Manager deal with a high level of abuse. The Department should be increasing the powers of Property Managers in this situation, not increasing the stress to individuals who are simply trying to

earn a living in a highly emotive career. If the Department is to consider prescribed reasons for termination and non-renewal as a reasonable change, then the Department *must*, at the same time, provide better protection for the physical and mental safety of its constituents who work in this role. This can only be achieved by amending the Act to allow immediate termination of a tenancy for abuse. Recently, a northern suburbs real estate office was temporarily closed by SAPOL due to a threat to the life of a Property Manager. Our business received a violent threat two weeks ago. It is only a matter of time before a Property Manager in South Australia is seriously injured or killed. Property Managers need the power to terminate tenancies where abuse is evidenced through text messages, email, or recorded calls.

Landlords also have no protection from fraudulent statements made on applications by tenants. Suppose a tenant lies on their application and the Property Manager cannot uncover the lie before the lease commences. In that case, once the lease starts, there is absolutely no penalty for the tenant, and the Landlord has no option for terminating the tenancy based on the fraudulent statements. In these situations, the Landlord is forced to wait until the tenancy agreement ends before they can find a more suitable tenant. Prescribed Reasons would further limit a landlord or Property Managers ability to terminate the tenancy agreement in these situations. If the Government seeks to enforce prescribed reasons for termination and non-renewal, then an amendment to the Act must also allow for immediate termination where a tenant has undertaken fraudulent action.

Recently, after placing a tenant, a Rental Property Network Property Manager has suffered 2am phone calls, abusive emails, texts and threatening calls from a tenant who was being evicted by another company for arrears while applying for this property. The tenant was not on TICA because the eviction was still in progress. The tenant lied on his application and provided a false reference. This Property Manager is one of the most highly regarded in South Australia, yet the tenant deceived her. The tenant's behaviour became unmanageable within hours of him moving in, and, despite now being able to prove the false reference, the previous SACAT process, and sustaining a barrage of abuse, the Property Manager has no option other than to wait out the twelve months to end the tenancy. Because of the volatility of the abuse and threats, the Property Manager will simply not renew the lease, and no reason will be given. If the Property Manager is placed in a situation where she must provide a reason, this will likely further inflame an already abusive tenant. In this situation, the outcome for the Property Manager poses a genuine risk.

Issues also often arise in tenancies where tenancy do not 'quite' breach their obligations but nonetheless constantly cause problems. This is common with Neighbour disputes, pushing the boundaries of body corporate by-laws, aggressive/abusive behaviour towards other residents and Property Management offices, and situations where the tenant is actively in breach of their tenancy agreement but proving the breach would be near impossible. For example, currently, it is common for pets to be 'hidden' by tenants at inspections. Even though there is clear evidence of pets at the property, we cannot 'prove' that a pet is living there. The same can be said for drug activity due to sighting drug paraphernalia on the property, other adults not permitted on the lease living in the premises, subletting or 'Airbnb' style accommodation letting by the tenants, and the operation of home-based businesses over what is permitted by the local council in the area. In all of these cases, while it is apparent that such activity is happening, proving it is difficult, if not impossible. As such, the simplest solution is to allow the lease to expire at its natural conclusion and then find new tenants without inflaming the situation. At this juncture, it is relevant to raise the poor mental health in the industry and the reason for not inflaming the situation.

Property Managers are not psychologists, social workers, or counsellors; yet, they face similar emotional situations daily. Currently, I am undertaking research into the mental health and well-

being of Property Managers. At present, Property Managers do not receive formal training for dealing with heightened emotional states. Despite dealing with emotional issues almost daily, most Property Managers are ill-equipped to manage this, and this contributes to burnout in the long term. The educational standards, particularly training in strategies such as detached concern, should be added to the formal training schedule for all Property Managers.

We also have concerns about how the prescribed reasons will work from a logistical standpoint. With the reasons provided, 'breach of tenancy', it is simply far too vague to base such a significant aspect of the RTA on. Would Property Managers or Landlords have to 'prove' that the breach has occurred, or will the serving of a breach notice be sufficient? What breaches will be adequate to end a tenancy? Will it matter if tenants rectify the breach or not?

Furthermore, what will prevent Landlords from simply using 'renovations' as a 'catch-all' clause for ending tenancy agreements? While this clause is required, it would mean that this ‘Prescribed Reasons’ proposal does not achieve anything productive at all, as it is open to abuse. Therefore, the proposal would only further complicate matters without protecting tenants.

The proposal may also create a systemic conflict between tenants and Landlords, as currently, most of the time, when issues arise during a tenancy, good Landlords and Property Managers work *with* the tenant to resolve them amicably. If these prescribed reasons are introduced, many Landlords and Property Managers will instead feel pressured into issuing breach notices for issues that otherwise would have been resolved agreeably so that they can end the tenancy if things do not improve. Property Managers and Landlords may, therefore, not be able to 'de-escalate' situations; instead, applications to the SACAT would increase significantly. Once again, this creates even more tension in an already emotive role. In addition, good Property Managers will always work with tenants on issues such as outstanding water bills. This change will mean immediate breach notices to tenants, placing tenants in a more vulnerable situation.

In short, while the prescribed reasons for termination initially appear to be in the best interests of tenants, it would increase conflict in the rental industry rather than protect tenants' rights. It also simply has far too much ambiguity to achieve any positive results and accomplishes next to nothing to protect the tenant; in fact, it likely further prejudices the 'mid-range' tenants who are trying to perform well but suffer some setbacks, the very type of tenant, I imagine, it set out to protect.

Longer fixed-term agreements

More extended Tenancy Agreements will be a positive change if changes are made to the RTA to prevent caveats from being lodged by tenants when long-term tenancy agreements are in place, and all regular RTA constraints remain.

Termination Notice Periods

Changing the notice period from 28 to 60 days would be a positive change for tenancies where everything is on track. However, it would be devastating for Landlords when tenants use it as an opportunity to do the wrong thing.

It is confusing to see this alongside the 'Prescribed Reasons for Termination' Proposal because these are the situations where landlords require the most protection. Currently, when there is animosity between landlords and tenants, it is common for tenants to cease paying rent when they receive the notice of non-renewal. At 28 days, this can be managed as a 6-week bond will be enough to cover

the rent arrears at the end of the lease, although it still often falls short when water and damages are calculated.
If the notice period were to be 60 days, then if the tenant stopped paying rent after receiving the notice, they would far exceed the bond held by the time the tenancy agreement ends. As such, this move would have a significant financial impact on landlords in situations where they already face regular losses, leading to higher insurance premiums and more debt owing through Housing SA Bond Guarantees.

It becomes even more problematic when considered alongside the proposal to change the bond from six to four weeks rent, as this means the rent arrears at the end of the tenancy could easily more than double the bond amount held.

Rarely, 'good' tenants are only given four weeks' notice, as most Landlords and Property Managers aim to provide these tenants with as much time as possible. As such, this would have the largest impact on tenants, who are more likely to abscond on their rent and cause major issues. The protection is not aimed towards 'good tenants' but further protecting those who willingly do the wrong thing. Whatever happens, any changes to this period ***cannot*** exceed the bond.

2. Residential Bond Amounts

The proposal to change the maximum bond amount to four weeks up to rent of $800pw must be supported by evidence. Within our organisation, the most significant percentage of bond claims generally occur in properties with a weekly rent of between $300 - $450pw. It is rare for properties over $800pw to see substantial bond claims; instead, it needs to be the ‘mid-range’ properties that are protected.

We do not believe that four weeks is enough to cover sizable bond claims within this rental range, especially as the price of labour and supplies is at an all-time high, and it is, therefore, more expensive than ever to have cleaning, gardening or repairs done.

Further, it is easy to see the issue with a 4-week bond when considering the timeline that Property Managers and Landlords must follow regarding rent arrears. A breach notice can only be issued once the tenant is 16 days in arrears. They then have seven more days to rectify it before the Property Manager or Landlord can apply to SACAT. Over the last few years, SACAT has consistently taken between 2-4 weeks to schedule a hearing, even for urgent matters. This leaves the tenant between 5-7 weeks in arrears before SACAT hears the case. It is already a fine line with a 6-week bond for most properties, but with a 4-week bond, it stops becoming feasible to protect landlords from rent arrears.

Reducing the bond amount would also lead to a significantly increased claim rate on Landlord Protection Insurance, causing increased premiums, or even more alarming is the genuine possibility of insurers pulling out of the South Australian market. This proposal should be supported only if data is compiled on the average bond claims in South Australia, specifically, how many claims total under four weeks vs over four weeks of rent. To consider making such a significant change without evidenced research and data analysis on current claims, or a twelve-month empirical study of actual bond claims, is irresponsible and places the entire South Australian property investment industry in jeopardy. The impact on the housing crisis is catastrophic if this decision is made without evidence-based research.

A far more sensible solution than decreasing the bond amount is to deal with the cause rather than the symptoms. Currently, a tenant needs to be more than two weeks in arrears (already a significant

debt) before the Property Manager can take any action. Instead, Form 2 Breach Notices should be able to be issued after the tenant is one week in arrears when their debt owing is far more manageable. This change would decrease the size of many bond claims and increase the likelihood of tenants being able to bring their rent back up to date. Not only is this a proactive solution to the problem, but it also better addresses governance. Responsible money lending is governed, yet the Act allows tenants to increase debt relatively easily, by not paying the rent for over two weeks. The fact is that tenants have a far greater chance of resolving a $400 debt than they ever do resolving an $800 debt. This fiscal responsibility of not allowing tenants to build up significant debt is the essence of responsible governance and must be considered as a better solution.

To further highlight this, most tenants who fail to pay rent exhibit poor financial literacy. Allowing these tenants to build to 16 days in arrears before being able to serve notice results in the opposite of what the legislation most likely intended. Tenants who make poor choices continue to do so and accrue debt. Stricter 7-day arrears legislation will ultimately make these tenants more accountable simply by the requirement of regular rent payments and the impending consequences.

There are other issues to consider regarding residential bonds, such as CBS releasing bonds 'by mistake' (something our company has been the victim of on multiple occasions) and extended timeframes on Silent Tenant Bond Claims. We will provide case studies on all topics if this assists the discussion.

The 6-week requirement for bonds also becomes less of an issue if bonds become transferable, something mentioned in the proposal which we support 100%. Rather than reducing the maximum bond amount to 'ease the financial obligation', making bonds transferable would also resolve this without significantly disadvantaging landlords.

Making RBO mandatory and providing more support for alternative bond loan products is also something which should be actively supported to resolve these financial issues.

3. Rent Bidding

We fully support the prevention of soliciting offers to pay an amount more than the advertised price. While these offers should be able to be made and accepted, they should not be able to be solicited, and similar to sales, any form of a Dutch auction should be prohibited.

4. Rooming Houses

We fully support further legislation of rooming houses; however, if there are changes to rooming house legislation, such as reducing the number to two, then it needs to clearly state that co-tenants on a standard residential lease are *not,* in fact, under a rooming house agreement. This is important as the current rental market has resulted in many friends renting with each other at the same property under regular residential leases. Sharing a residential tenancy is something which should be supported.

5. Renting with pets

While we have our concerns over this proposal, we support greater flexibility regarding pets in rental properties. Therefore, we support this proposal provided that:

- Further definitions and examples are stipulated of 'reasonable reasons to refuse a pet' to reduce ambiguity

- A guideline is offered for a situation where adequate fences are not in place; however, the tenant offers to erect them to have a pet approved.
- If landlords refuse a pet, it is the tenants who must apply to the tribunal to have that denial overturned
- Restrictions on Carpet Cleaning and pest control at the end of tenancies is reduced in situations where an indoor pet is requested by the tenant:
    - i.e., if a tenant applies for and permission is given for an indoor pet capable of carrying fleas/ticks, then carpet cleaning/pest control must be able to be enforced at the end of the tenancy.
- Allowances are made for 'specific' reasons to refuse a pet, I.e., if the landlord intends to move back into the property after the tenancy expires and has allergies to the pet requested.
- Pet bonds are approved and are for at least one week's rent. This is a far more reasonable amount than the $260 mentioned, which would not do much to cover any damage that could occur.

6. Housing Standards and Retaliatory Evictions

Currently, a Housing Improvement order already limits a landlord's ability to terminate the tenancy, prevents rent increases, and fixes rent at a figure set by Housing SA. As such, it is difficult to determine what exactly is being proposed here that does not exist already.

Minimum housing energy efficiency standards are a generally positive idea; however, it must be noted that affordable housing is still required, particularly in low socioeconomic areas. Therefore, any legislative requirements that create a blanket rule for all rental properties in the state and force landlords to spend more money may have a particularly damaging impact on the properties at the lowest end. The potential negative result could be an increase in rent for these lower-income areas already struggling with affordability issues.

If energy standards are the goal, a government incentive would be a significantly better option that would support higher energy standards without lifting the rent of lower-budget properties.

7. Safety modifications and minor changes

While modifications to allow tenants to install wall anchors would be a positive change, it must be made clear that the requirement on tenants is to undo the changes at the end of their tenancy. This may include cosmetic repairs such as re-painting to repair any damage caused.

Allowing tenants to make other alterations without consent however is problematic, as issues such as quality of workmanship and liability for accidental damage caused during or after installation become more frequent. As an example, a tenant installing a shower rail may not affix it correctly to a stud, damage the waterproofing membrane, drill through a water pipe or crack tiles if they are given blanket permission to make alterations. Who would then bear the responsibility for these repairs, especially if the true extent of the damage is not discovered until much later, and potentially after that tenant has already moved on.

Many items which may fall under 'minor alterations' also have alternative products that tenants can employ rather than making alterations to the property. Child safety gates, pet doors, childproof latches and picture hooks all have options that can be installed with zero impact to the house, and can easily be removed by the tenant at the end of the tenancy without any damage having occurred.

Internal window coverings present a different problem, as allowing tenants to change these during a tenancy then relies on the landlord's window coverings being stored correctly and reinstated without damaging them when the tenancy ends. In our company's experience, blinds and curtains are often damaged or lost when stored for extended periods of time, causing loss to the landlord. Ultimately, these are rental properties, and investors assets do need to be protected or where is the incentive in the private housing market. If legislation makes owning an investment property too difficult then investors will exit the market place and South Australians will understandably turn to the government for more public housing to accommodate tenants.

8. Start of tenancy requirements:

Standardisation of questions asked on tenancy applications is a favourable resolution for the industry. Race, gender identity and religion do not need to be asked by any agent, though we are currently aware of any agencies in South Australia asking these questions.

However, age and children are relevant questions to ask tenants, as the affordability of a rental property is the number one consideration when approving tenants. Placing a tenant into a property they cannot afford is unethical for landlords and the tenants themselves. Children affect affordability; there is no escaping that fact, and they also determine whether a property is suitable for a particular tenant. For example, we have had families with 3-4 children applying for two-bedroom units during this rental crisis. The issue is that the home cannot support so many occupants. Age is also an essential consideration in processing applications, as the digital age has made it extremely easy to submit fraudulent applications, and age is often something that assists us in identifying mistruths about employment and income. It is not the be-all and end-all but an important tool. Preventing agents from knowing this information would also stop us from obtaining a full copy of a tenant's Identification, such as a driver's license, which is vital for our records, insurance claims and identity checks and verifications.

Regarding tenant blacklists; tenants should be able to access this information for free directly through the relevant databases. However, agents and landlords should not be responsible for 'seeking out' this information on behalf of tenants.

9. Domestic Violence Provisions

The only way to make it easier for tenants to leave in a domestic violence situation without disadvantaging landlords excessively is to have a system whereby tenants can leave immediately and have a government organisation such as Housing SA provide the bond in their place. This would prevent pushback from agents and make the process smooth.

10. Water billing

In short, updating SA Water's system so that tenants are invoiced directly would resolve all concerns about water invoicing.

With regards to water leak charges, if this were to be put into place, then would tenants also be held liable by SA Water for excess water charges from leaks not reported to landlords?

11. Illegal drug activity

We fully support a requirement for landlords to undertake testing when drug activity has occurred within a rental property. However, neither landlords nor Property Managers are narcotics experts, so we are concerned by the word 'suspect' in the proposal. A requirement such as this must be clear and easily definable, not vague and uncertain, as it will be neither enforceable nor practical otherwise. Two options for this requirement seem like an obvious way to resolve this:

- The SA Government could provide the tests without a cost to the Landlord, in the interest of public health and safety
- Alternately, the requirement on *when* the tests must take place needs to be easily definable, and we propose it should only be required when someone who *is* an expert in drug activity identifies drug activity. In short, we believe that if the Police notify the landlord that drug activity has occurred within a rental property, then testing must take place.

12. Third Party Payments

We fully support this sort of activity being stamped out in South Australia, and believe that an option for paying rent digitally without any fee being incurred must be a requirement for all South Australian Tenancies.

13. Modernisation of Language

This proposal is unnecessary and would only serve to cause complications and confusion amongst landlords and tenants, especially those who speak English as a second language or those who live interstate or internationally. The current terms are familiar and widely used, and easily understood by all current Landlords and Tenants, and changing them achieves no positive outcome at all.

We are happy to discuss this submission at any time and look forward to positive reforms that help improve the industry.

Yours Sincerely

Moni Mazzeo
Director – Rental Property Network Pty Ltd
0419 814 709
monimazzeo@rpnsa.com.au