

ROBERT SIMMS

MEMBER OF THE LEGISLATIVE COUNCIL

16 December 2022

Review of the Residential Tenancies Act
By email: CBSReforms@sa.gov.au

Dear Commissioner Soulio,

Submission to the Review of the Residential Tenancies Act

I welcome the opportunity to respond to this review.

I have received significant feedback from many constituents that the Residential Tenancies Act (RTA) is skewed to an unacceptable degree in favour of landlords and against tenants, and it must urgently be revised to redress the imbalance and provide better security, rights and protections for people who rent.

In particular, I urge you to act on the following:

'No cause' evictions

The existing ability for landlords to easily evict people without grounds ('no cause' evictions) means that tenants are reluctant to come forward with legitimate issues concerning their tenancy and causes great uncertainty and stress, especially amid the current housing crisis. Numerous tenants have contacted me to raise issues that they have had in requesting their landlord make minor changes to the property they are renting or to undertake basic maintenance. These tenants often express their worry of taking a landlord to the Tribunal because they might earn a reputation as a 'bad tenant', putting them at risk of not having their lease renewed. This situation is exacerbated by the record low vacancy rate in South Australia: PropTrack Rental Report for the September 2022 quarter revealed that Adelaide has the lowest vacancy rate in the country, alongside Perth and Hobart. As a result, many fear that they will face homelessness. Changes to the RTA to require landlords to have a prescribed reason for discontinuing a tenancy will provide tenants with greater security of tenure as well as more confidence to assert their rights without fear of a retaliatory eviction.

Long-term tenancies

Numerous constituents reported to me their tenancies are limited to 12 months, leading to insecure housing and more opportunities for landlords to increase rent. The RTA should be amended to accommodate longer fixed term tenancy agreements that offer greater security and stability for both landlords and tenants. In addition, the current requirement for landlords to provide tenants with 28-days' notice prior to the end of a fixed term tenancy agreement if they do not intend to renew the tenancy agreement should also be strengthened to provide tenants with more time to make accommodation arrangements in the lead up to the end of their tenancy.

Rent controls

Data from the SA Housing Authority released in June this year showed an increase in rental prices of 20 per cent over the last 2 years. On average rental prices have increased from \$350 to \$420 a week. The introduction of rent controls would provide a solution to reduce financial pressure renters are currently experiencing because of spikes in rent prices and protect them from unfair rent increases that risk plunging families into poverty and homelessness.

Under current laws, renters who are facing excessive rent increases may challenge their landlord's decision at the Tribunal. This requires significant amounts of effort from renters and much of the information required to prompt full consideration of the matters the Tribunal may consider is not easily available to them, and often much more readily available to landlords. Furthermore, most renters hesitate before taking a rent increase to the Tribunal, because of the risk associated with such an undertaking: as previously mentioned, the RTA currently allows landlords to evict renters for 'no cause' and relist a property rather than negotiating. Numerous jurisdictions in Europe and the United States have implemented rent controls, and the ACT has also successfully introduced a rent control framework that sets a threshold for 'reasonable' increases of 110% of the change in CPI since the last rental increase, or since the tenancy agreement began. In July this year I introduced to Parliament an amendment to the RTA that would establish rent controls in SA by capping rent increases at the rate of CPI and restrict rent increases to just once every 24 months. These examples and proposals for rent control should be considered in the review.

Renting with pets

Refusal to allow pets can significantly restrict a person's ability to find appropriate and affordable housing. This leads to pets being given up to shelters, abandoned, put down or in some cases renters becoming homeless with their animals. Research published by BMC Psychiatry has demonstrated that pets can assist in managing long-term mental health conditions and are sometimes prescribed as part of mental health treatment plans.¹ Furthermore, research published in the journal Paediatric Research suggests pets can help child development and the European Journal of Medical Research has also published research indicating that pets encourage exercise and can provide structure in the lives of elderly people post-retirement.^{2 3}

The absolute discretion currently provided to landlords to deny of permission for renters to have pets is indicative of a broader problem of the lack of renter autonomy within SA's rental system. The RTA should provide for a presumption that a tenant who applies to keep a pet in a rental property cannot have their request unreasonably refused, provided the tenant agrees to comply with any reasonable conditions imposed by the landlord.

Rent bidding

It is vitally important that there are transparent and fair processes for people who are seeking to rent a new home. The RTA does not explicitly prohibit the practice of rent bidding which exposes prospective renters to significant pressure to make and accept offers higher than the advertised price and impacts rental affordability by further driving up rental prices. As noted in the Discussion paper, Victoria, Queensland, and the ACT have all introduced changes to discourage rent bidding but landlords in these jurisdictions can still accept offers of rent above the advertised price, provided the

¹ <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-016-1111-3>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5369070/>

³ <https://eurjmedres.biomedcentral.com/articles/10.1186/2047-783X-16-12-557>

offer is made by the prospective tenant without the landlord or land agent soliciting or requesting the higher offer. As Leo Patterson-Ross, the head of the NSW Tenants' Union, recently pointed out in an interview with The Guardian about similar changes currently proposed by the NSW Government, the experience from these other states and territories indicates that rent bidding continues in a different form as prospective tenants offer to pay landlords more rent than is advertised in the hope of securing a home. The RTA should therefore prohibit landlords from soliciting offers to pay an amount of rent above the advertised price and also prohibit landlords from accepting unsolicited higher offers as well.

Data collection and security

People applying for rental properties are often required to provide their driver's licence, bank statement, employment history, rental history, passport and even the number of their dog's microchip if they have one. At a public meeting I held in October, renters expressed their concerns that they refuse to provide any information the landlord or property manager asks for, they will not be considered for a rental home. Multiple participants also raised concerns about the storage and security of personal information provided as part of rental applications (including information captured by third-party rental apps), particularly following the recent highly publicised Optus and Medibank data leaks. The culture of information collection by the real estate sector undermines the right of privacy and worsens the power imbalance between renters and landlords. The review should consider changes to the RTA to protect the personal information of renters and ensure that only necessary and relevant information is collected.

Third-party rental apps

It has been reported that real estate agents are forcing tenants to use third-party rental payment apps which can cost tenants up to \$500 a year. Although the law requires that these apps, which add around \$10 a week to rental bills, can only be used if landlords and tenants agree (and tenants must be provided with a free payment option) many tenants have reported their frustration that this cost burden has simply been added onto their weekly bills without appropriate consultation. In addition, background checks for rental applications may be required to be completed using third-party apps such as 2Apply and Equifax. In the case of the 2Apply app, the full features required to achieve a five-star rating cannot be accessed unless the user pays to 'unlock' them, creating a further financial barrier for those seeking to rent a home. Given that the cost of rent continues to rise in South Australia, and lower and modest income renters continue to be the hardest hit, the practice of mandating the use of third-party apps impact on the most vulnerable tenants in our state. The RTA should be revised to ensure these practices no longer occur.

Energy and ventilation standards

Many tenants are living in housing that is expensive to heat and cool and does not meet community expectations around having a suitable home to help maintain health and comfort. The introduction of minimum energy efficiency standards for rental standards, as outlined in the Discussion Paper would be a significant step in both improving their comfort and reducing their environmental impact.

The review should also consider the introduction of broader energy and ventilation requirements, including insulation standards to ensure homes are properly insulated; window and door standards to ensure that windows and doors are properly sealed and do not allow drafts or leaks; heating and cooling standards to ensure that homes have an appropriate heating and cooling system that is

properly maintained; and ventilation standards to ensure that homes have adequate ventilation system that provides fresh air and reduces moisture and other indoor pollutants.

In summary

I have serious concerns with the Residential Tenancies Act as it currently stands. Revisions are urgently needed to fix the significant imbalance of power between landlords and tenants and ensure that South Australian tenants do not have less protections than their counterparts in other states. These concerns can be addressed through amendments that respond to the following issues:

- ending no-cause evictions;
- giving renters security and stability through long-term tenancies;
- prohibiting 'no pets' clauses in leases;
- introducing rent capping to protect vulnerable people from unfair rent hikes;
- ending rent bidding that forces unfair rent increases;
- greater protections for the personal data of renters;
- prohibiting the use of third-party rental payment apps; and
- ensuring all homes meet energy efficiency and ventilation standards.

Please do not hesitate to contact me at should you require any further information.

Yours sincerely,



Robert Simms MLC

16 December 2022