

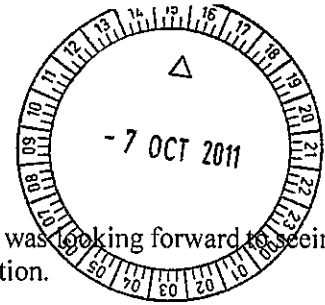
PUBLIC

upon tabling of Committee's ...

3 August 2011

TO WHOM IT MAY CONCERN**Re: Residential Tenancy Amendments Bill 2011**

On hearing that there was to be an amendment to the current Residential Tenancy Act, I was looking forward to seeing some positive changes to what was in my opinion, an out of date and unbalanced legislation.



To my disappointment, once again I found that the amendments were again mostly biased in favour of the tenant. While I agree that there are some unscrupulous landlords, I know that the statistics would be heavily on the side of the landlord who tries to do the right thing by the tenant and is sometimes left wondering why. The number of wayward and unsavoury tenants far outweigh the number of conscientious tenants. In fact many landlords, once they get a good tenant will go out of their way to do everything possible to keep them.

The amendments call for more record keeping and transparency. While most landlords have a property manager or agent to handle the paperwork and financial side of a tenancy there is a growing number of property owners who choose to manager their properties themselves. Numerous reasons have contributed to their decision not to engage a property manager – the lack of good property managers in Perth, the fees and charges incurred for sometimes poor service or the booming rental market for room by room rentals which property managers will not handle. It's these landlords which are constantly being disadvantaged for doing nothing more than trying to cover their mortgage repayments on their investment properties which may be worth less now than when they bought them. Landlords should keep accurate records, not only for the tenants but also for tax reasons, most do however, the new legislation seems to be bogged down in red tape.

The amendments to the RTA do nothing to address the issue of room by room rentals, boarders and lodgers and the short term rental market. Many back packers, students and even every day families need some form of accommodation and don't want to be tied to a minimum six month lease. They may be waiting for a new home to be built or trying to save for a deposit. They often don't have references, have been traveling or do not have an established rental history. These people find it hard to rent through the normal rental channels so resort to private rental accommodation.

This niche market needs to be addressed and is independent of the RTA. I have been a joint property owner for many years and have met some wonderful and interesting people during that time. Some of these tenants have even joined my family for Christmas dinner to our great pleasure. We have provided them with food and basic living skills when needed and taken them into our hearts, often keeping in contact with them even after they have moved on.

On the other side of the coin, we have also come across the worst type of tenant imaginable. Tenants that abuse and wreck your property that you have worked hard all your life for in an effort to set yourself up for later years or leave to your children. These tenants don't deserve any rights, they know how to work the 'system' having moved on from one unsuspecting landlord to another. All very nice and agreeable – until they get the keys!

What gives people like this the right to destroy the hard work of honest people. We recently had to go to court to reclaim our own property from a tenant who was squatting. He was abusive and threatening and while we won the court case by default of non appearance we then had to evict him from the property. This was another exercise in itself so while a landlord can win in court it doesn't necessarily solve the problem of actually getting the tenant out. The police told us they couldn't get involved because it was a tenancy dispute, the court told us to fill out a form – which turned out to be several very expensive forms and then wait for a court date. The tenant ended up with another 4 weeks free rent and we ended up with an unrentable house. This cost us over \$3,000 in court expenses alone not to mention the emotional and mental anguish we suffered. We are still getting vindictive threats and recriminations from him. I ask again, what rights and at what cost does the landlord have in a situation like this.

There are many tenant advocacy groups funded by the Government and yet only one landlord group and one property owner group. When is the Government going to do something to help the landlords and balance the scales.

I draw your attention to just a few of the following points in the amendments which do nothing to encourage people to invest in property for their future.

- Large increase in applicable fines – some increases up by 500%

Section 29 Bonds

- Pet bonds should be allowed for damage to gardens and property not just parasites
- All bonds to be lodged with the Bond Administrator – what about the short term renters, backpackers, overseas students – how is the bond to be refunded to them – foreign currency? Travellers need the bond on same day they leave in most cases. Turnaround time for repayments from DOCEP are usually 3 – 4 weeks

31(b) Increase in Rent

- No rent increase allowed for first month of a lease renewal

43. Urgent Repairs

- Tenants allowed to do urgent repairs and charge the owner – who decides if the repair is ‘urgent’ the tenant?

46 (3) Inspections

- Maximum 4 inspections per year to be carried out – Should be more like the first within 4 weeks and then every 2 – 3 months depending on how the initial inspection went. Landlords should be given the option to keep an eye on their investments, just like the share market or any other investment opportunity.

59E Interfering with Quiet Enjoyment

- Interfering with tenants peace, comfort and privacy – fine of \$10,000? Some tenants give cause for the landlord to interfere with their comfort and privacy – who decides on what? Is this another court matter in our already overloaded courts?

59F Security

- Fine for changing locks without tenants consent – hello! Am I the only one who sees the irony of this?

62 (4) Notice of Termination

- Tenants can have extra 60 days in property after the Court has ruled to deliver vacant possession of the property – that makes 120 days now that they can live rent free while the landlord tries to get them out through the court system.

The above are only a few examples of where I think the amendments need to be revisited.

I agree that tighter control is needed over rental accommodation for landlords and tenants and while it's difficult to have legislation that covers every little aspect of this area, much is left to interpretation. While each person's interpretation of something can vary hugely from another's, the legislation should be such that it is seen to be fair and unbiased. I don't feel this is the case in this instance. I don't feel that one piece of legislation can cover a myriad of issues and perhaps it's time to separate the RTA into more than one Act.

I would ask that you revisit the amendments and the Act and raise my concerns for wider discussion with your peers. Input should be sought from independent property owners and private investors so that more informed decisions can be made.

Yours sincerely

Debra Darch



Minister for Finance; Commerce; Small Business

Hon Simon O'Brien MLC

Our Ref: 29-19227

Ms Debra Darch

Dear Ms Darch

RESIDENTIAL TENANCIES AMENDMENT BILL 2011

In an email dated 5 August 2011, you raised concerns about the Residential Tenancies Amendment Bill 2011 (the Bill), with the Hon Troy Buswell MLA, Minister for Housing. The Minister for Housing forwarded a copy of your email to the Minister for Commerce, the Hon Simon O'Brien MLC, as he has responsibility for the *Residential Tenancies Act 1987*. The Minister for Commerce has requested that I reply to you on his behalf.

The majority of the provisions in the Bill have been informed by the statutory review of the *Residential Tenancies Act 1987* (the Act). The review of the Act and the processes leading to development of the Bill have involved extensive research and consultation with stakeholders, including property owners, property managers, tenant groups and relevant Government departments. The Government is satisfied that the Bill balances the interests of landlords and tenants while promoting a more efficient and fair tenancy market.

Please find attached further information in relation to the specific concerns you raise.

Thank you for bringing these matters to the attention of the Government.

Yours sincerely

Keetha Wilkinson
PRINCIPAL POLICY ADVISER

5 SEP 2011

Boarders and lodgers

Boarders and Lodgers are currently exempt from the *Residential Tenancies Act 1987* (the Act). The statutory review of the Act recognised the need for legislation to regulate the boarder and lodgers industry, and that this sector differed significantly from the mainstream residential tenancy market. The review recommended, therefore, that there be further consultation with stakeholders with a view to developing separate provisions to regulate boarders and lodgers. The Department of Commerce has commenced work on this initiative and will be releasing a discussion paper as part of the consultation process.

Cost of eviction

The timeframe for commencing eviction action against a tenant for non-payment of rent is consistent with other States and Territories. Much of the perceived delays in obtaining an eviction result from the limited time that the Magistrates Court can allocate to the broad range of matters that come before the Court. The Department of the Attorney General is introducing new procedures to assist in streamlining the application and hearing process. Among these is the introduction of e-lodgement, whereby you can lodge your application for a court hearing electronically. Your local Magistrates Court will be able to provide further information on this initiative.

Penalties

The review of the Act recommended that all penalties under the Act be reviewed. The penalties under the Bill have been benchmarked against other residential tenancy laws applying in Western Australia, such as the *Residential Parks (Long-stay Tenants) Act 2006* to ensure equity in the residential tenancy marketplace.

The fines and penalties are a maximum amounts only. The Department of Commerce must prove a case before the Magistrates Court before any penalty would be applied.

Pet Bond

The maximum amount of pet bond has recently been increased from \$100 to \$260 to reflect the current costs of fumigation. As you note, the pet bond covers fumigation and not other types of damage. Any damage caused by a pet is to be recovered from the security bond.

The proposal to increase the security bond to cover landlord's costs was carefully considered during the review of the Act. The review recommended that the maximum bond amount remain unchanged on the basis that the four weeks rent already represents a substantial upfront cost to tenants and an increase would make access to rental accommodation unaffordable for many tenants.

The Bill includes a proposal to permit landlords to increase the amount of bond every six months if the rent has been increased in the same period. Currently the Act limits such increases to once every 12 months.

Increase in rent after renewal of lease

Currently the Act requires that if the rent is to be increased during the course of a tenancy agreement, the tenant must receive 60 days notice prior to the increase taking effect. The Act is silent, however, as to any notice required at the conclusion of one fixed term tenancy and the commencement of a new tenancy agreement for the same premises. The review of the Act highlighted that it is possible for a tenant to receive no notice of a possible rent increase in this situation.

The Bill seeks to amend the Act by requiring that, where a lease agreement is renegotiated for the same premises, a rent increase cannot take effect for 30 days after the agreement is entered into to provide the tenant with reasonable notice of the proposed rent increase. This was seen as a reasonable balance between the right of the landlord to increase the rent and the right of the tenant to receive fair notice of the proposed increase.

Urgent repairs

The Act currently requires the landlord to compensate the tenant for any reasonable expense incurred by the tenant in making urgent repairs. The Bill clarifies these responsibilities. The types of repairs considered urgent will be prescribed in the Regulations to the Act following consultation with stakeholders. The tenant is limited to conducting repairs to the minimum extent necessary.

Inspections

The Act provides for four routine inspections in a 12 month period which provides maximum flexibility to accommodate a broad range of tenancies. This is considered to be a reasonable balance between a landlords' right to inspect the premises and the tenant's right to quiet enjoyment.

Interfering with quiet enjoyment

It is currently a requirement under section 44 of the Act that a landlord is not permitted to interfere with the tenant's quiet enjoyment. Under this current provision, the tenant's only option if a landlord does interfere with their quiet enjoyment is to apply to the Court to terminate the tenancy agreement or to seek compensation.

The review of the Act found that to require a tenant to terminate the tenancy agreement or to apply to the Court for compensation was an unreasonable burden in the circumstances. It was therefore recommended that this provision be amended to include a penalty to be applied if a landlord breaches a tenant's quiet enjoyment.

As with all other penalties in the Bill, the penalty for breach of quiet enjoyment is a maximum penalty. The Court, in determining a penalty to be applied in any given situation, will take into account the circumstances of the case.

Security

Currently the Act requires that neither the owner nor the tenant shall alter, remove or add any lock or device without the consent of the other party. The Bill clarifies the existing requirement.

Notice of termination

Section 64(4) allows the Court to extend a "no ground" termination notice for further 60 days if the Court is of the view that the circumstances warrant the extension of time. It is important to note, however, that in order to access this provision, a tenant must make an application to the Court for the extension of time within seven days of receiving the initial termination notice from the landlord.

It is envisaged that this would only occur in exceptional circumstances; for example, where the tenant is due to undergo surgery or has exams at the time they are due to vacate the premises.

It is also important to note that section 64(4) allows the Court to make an order for compensation in favour of the landlord for any loss caused by the extension of time.