RESIDENTIAL TENANCY LEGISLATION IN THE NORTHERN TERRITORY: An overview of the 1990s

Research Paper No.15
November 1996
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November 1996
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Research paper; no.15.

ISBN 0 7245 05903
ISSN 1324-2245

1. Landlord and tenant - Northern Territory.
2. Rental housing - Law and legislation - Northern Territory.

346.94290434

i. Northern Territory Library.
ii. Title.
iii. Series; Research paper (Northern Territory Library); no.15.
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2. INTRODUCTION:

In 1993 it was estimated that 52% of the Northern Territory’s (NT) population was renting compared to 30% Australia-wide. ¹ Half of these NT renters were living in Housing Commission homes. ² By 1995 new Australian Bureau of Statistics figures showed that 45% of Territorians rented and 44% owned or were buying their own homes. This figure compares with the national average of 25% of Australian’s being tenants. NT Real Estate Institute president Murray Herrmann attributed the high rental rate to:

...many people coming to the NT for short periods and the high cost of building...A lot of the people who come here are not permanent...Many are with companies and are employed here for one or two-year stints...Then there are the armed forces people and in some cases Commonwealth public servants.

The Office of Consumer Affairs and Fair Trading administers the Tenancy Act which sets out the rights and responsibilities of both landlords/agents and lessees.

Due to the wealth of information on public housing this paper will only investigate private rental in the Northern Territory, with an emphasis on the administration of bond monies.

3. LEGISLATION FOR RESIDENTIAL TENANCIES IN AUSTRALIA:

Constitutional responsibility for legislation governing residential tenancies in Australia lies with the States and Territories. This has led to inconsistencies in legislation and in 1994 the Commonwealth Department of Housing and Regional Development commissioned a study into tenancy legislation throughout Australia. A

¹ Toulson, Andy. “NT Tenants Look to Rental Charter”, NT News. 4.10.93.
² “Bonds: Tenants to Get New Deal”, NT News. 19.11.93.
³ “NT Tops Rental List for Nation”, NT News. 9.2.95.
Steering Committee carried out by external consultants was established with representatives from National Shelter, the State Housing Authorities, Commonwealth Government officials and the Real Estate Institute of Australia. The report *Minimum Legislative Standards for Residential Tenancies* was launched in May 1995 and made a number of recommendations.  

4. REVIEW OF THE *TENANCY ACT (NT)*:

The Northern Territory *Tenancy Act* was introduced in 1979. Pressure from the Working Group conducting a review of Consumer Affairs Policy and Legislation and continued allegations of wide-spread use of improper practices in letting of commercial premises, caused the former NT Minister for Health and Community Services, Steve Hatton, to appoint a Working Group in September 1990.

The Working Group was formed to investigate the problems experienced by both tenants and landlords and the necessary legislation or regulatory processes that needed to be put into place to alleviate problem areas. The Working Party comprised of chairman Rick Setter, two Consumer Affairs representatives, the Registrar-General, one representative from Industries and Development, one from the Housing Commission, one from the Real Estate Institute and a semi-retired real estate agent.

The Working Group developed their recommendations based on consultation with a wide selection of the Territory community.

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5. NT WORKING GROUP DISCUSSION PAPER *TENANCY REVIEW* (OCTOBER 1992):

On August 31, 1992, Neil Bell, Shadow Spokesperson for Primary Industry and Fisheries, Lands & Planning, Attorney General, called for the long awaited report on NT Tenancy laws stating:

"Meanwhile, Territory tenants have to put up with some of the worst tenancy law in the country... The Government should be particularly looking hard at the Bond Board Scheme, but his report continues to gather dust somewhere." 

In October 1992 the Working Group published its *Discussion Paper: Tenancy Review*. The discussion paper was produced for public comment and consultation before the preparation of a final report. Recommendations were made to bring NT legislation into line with other states. Recommendations covered tenancy of houses, flats or units, permanent tenancy in caravan parks, retirement villages and Housing Commission properties. Recommendations included:

* Bond money to no longer be lodged with owners or real estate agents but to be held with the NT Office of the Commissioner of Tenancies, part of the Consumer Affairs and Fair Trading Department (this would expand the Department's role).

* The interest of the bonds would not go to the landlords but towards the commissioner's administration costs.

* A major recommendation called for a standardised form of agreement which would feature a clear disclosure of rights and obligations, tenancy information and advice on means of redress. A condition inspection would be included and

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mandatory when a bond exists. This condition report would be lodged with the Office of the Commission and would be a main point of reference in any dispute over bond monies.

If disputes arise the Office of the Commissioner would attempt to get the two parties to sort it out, otherwise an independent arbitrator funded by the Office of the Commissioner would be called in. The last resort was the right of appeal to “tenancy court” presided over by a magistrate whose decision would be final. ¹¹

If any bond security scheme was to ‘function effectively’ it was deemed by the Working Group that the following would be necessary:

* a clear statement of role and functions of the scheme;
* provide clear and unambiguous definitions;
* impose strict requirements and procedures on condition/inspection reports;
* expect a better standard of property management from the industry;
* proper procedures for the collection, holding and refund of deposits; and
* appropriate appeal mechanisms to quickly resolve disputes when they arise.

The Working Group believed that many of these requirements could be covered in legislation but there was still a need to create greater awareness through informing tenants and landlords by devices such as education and training. The discussion paper was open for comment and submissions until the end of November 1992. ¹² (see reading no.3 for the Working Groups proposals for security deposits)

In response for calls for a Rent or Tenancy Board, the NT Real Estate Institute (REINT) claimed that rents could increase. The President, Phil Doyle, stated that

"tenants already have security for bond money which is deposited by real estate agencies in approved trust funds in banks or lending institutions." 14 Doyle and the REINT representative on the Working Group were "completely against" establishing a Rent Board. 15 Historically, the agents have received the interest from the bonds. At the end of 1992 it was estimated that $7.2 million was held in bond money through the rental of an estimated 8000 homes. 16 REINT lodged a submission with the Working Group in regard to the discussion paper claiming:

The industry strongly opposes any enlargement of the bureaucracy to handle either bond monies or disputes between tenants and landlords. 17

REINT pointed to a similar scheme being investigated and rejected in Victoria. As part of the submission to the Working Group, REINT surveyed on estimates the amount of bond money held by real estate agents and landlords and arrived at a figure "a long way short of the $7 million estimated by the discussion group". 18

Leslie Hall, the Co-ordinator of the tenant representative group SHELTER Darwin, said her organisation, partly funded by the Federal Government, supported the central authority plan to control bond money as "in other states the interest accrued from bond deposits funds a tenancy advice service." 19 Hall claimed that interstate experience had shown that bonds administered by an impartial agency were efficient, especially in the case of a dispute where a third party was preferable. The organisation conducted a phone-in for Darwin's renters to voice their opinions on the recommendations between November 25 and 28, 1992. The phone-in attracted thirty eight callers of which thirty seven supported the discussion group's bond plan.

In December, the Working Group met to work through the fifteen to twenty submissions it had received. Bond monies was the most prevalent aspect of the

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14 "REINT HIts Rents Plan", NT News. 29.10.92.
16 Ibid.
Tenancy Review raised by the submissions made to the Working Group. Rick Setter stated that response in favour and against the establishment of a central body to administer bonds was about half for and half against. The Working Party continued to consider the question of how to minimise creating a new bureaucracy and costs to the government and the taxpayer. Setter identified common problems as "key money, registration of leases and full disclosure by the landlord of all costs and charges associated with commercial leases".

In June 1993, Rick Setter stated that the Working Party was working its way through more than seventy submissions.

To mark International Tenant's Day on October 4, 1993 tenants' organisations from around Australia called for the establishment of a tenants' charter sanctioning rights to affordable housing and a fair deal. The charter called for provisions to prevent discrimination, with bond disputes being highlighted as the most common dispute. REINT denied that agents or landlords regularly withhold bonds for cleaning purposes and stated that agents were bound by the Tenancy Act, rules of conduct and a code of ethics. Private rentals are still governed by the Act but are not bound by rules or controlling regulations.

6. THE REPORT OF THE WORKING GROUP APPOINTED TO REVIEW TENANCY LAW IN THE NORTHERN TERRITORY OF AUSTRALIA, NOVEMBER 1993:

The Report of the Working Group to Review Tenancy Law in the Northern Territory was handed to the Attorney-General on November 19, 1993. The 115 recommendations were made to bring the NT into line with Queensland, NSW and South Australian legislation. The most controversial recommendations surrounded the

20 "Bonds Worry Tenants", NT News. 6.5.93.
21 "Tenancy Report Due", NT News. 9.6.93.
23 Toulson, Andy. "Agents are Fair, says REINT", NT News. 7.10.93.
administration of bond money. 24 Section 39 of the *Tenancy Act* permitted the landlord or agent to hold the security deposit in a trust account with the interest accrued being retained by the landlord or agent. The report suggested:

That all security deposits (bonds) be lodged with a single commercial organisation with a Territory-wide presence. The commercial organisation with the responsibility to perform this role be appointed by open tender. Its role will be to act as the agent on direction of the Statutory Officer and, subject to the direction of the Statutory Officer, carry out the functions of receiving, holding and disbursing all security deposit monies. 25

(See reading no.4 for relevant section of report)

Daryl Manzie, Attorney-General, decided to seek public comment on the report, before considering action such as new legislation. Manzie said the NT Government would allow three months for comment before considering action in regard to the reports recommendations. 26

In January 1995 the Deputy Leader of the Opposition, Maggie Hickey, called for the response to the Tenancy Review after more than two years. She questioned why the central bond authority had not been set up and pointed out that it was especially needed as the “government had refused to fund the tenancy-rights group SHELTER”. 27

7. DRAFT RESIDENTIAL TENANCIES ACT (NT):

The draft *Residential Tenancies Act* was released for public discussion in early 1996. In February 1996 Steve Hatton (Attorney-General) extended the deadline for

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submissions to the Government in regard to draft legislation of the Residential Tenancies Act until March 31, 1996. The legislation was due to be introduced in the August sittings in 1996.

8. AUSTRALIAN CAPITAL TERRITORY:

The Australian Capital Territory (ACT) Community Law Reform Committee was given the task of researching tenancy laws in September 1990. A discussion paper Residential Tenancy Law was released in May 1992 with community consultation completed by August 1992. In December 1994 the Committee tabled a report recommending preparation of new legislation. In December 1995 a draft proposal prepared by the Law Reform Unit to alter the ACT residential tenancy laws was tabled and opened for public comment. The draft included 174 recommendations, with major changes such as the proposed establishment of a residential tenancy tribunal with new powers. In 1996 a draft Standard Tenancy Agreement is due to be released, resulting in new legislation.

(a) Legislation

Landlord and Tenant Act 1949

(b) Bond

Payment of bonds to the ACT Rental Bond Office applies to all tenancies where they are used as residences. The bond monies is deposited in a Government Trust Fund. Bond is limited to 4 weeks rent and condition reports are held by the Office with disputes being heard by the Small Claims Court. The interest earned on monies is used to administer the office and provide landlord and tenant information programs or

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to help provide residential accommodation. This system is under review through recommendations from the Residential Tenancies draft bill. (see reading no.5.)

(c) ACT Tenancy Tribunal
The draft ACT Indicative Residential Tenancies Law includes the establishment of a Tenancy Tribunal.

9. NEW SOUTH WALES:

(a) Legislation
Residential Tenancies Act 1987
Landlord and Tenant (Rental Bond) Act 1977
Landlord and Tenant Act 1899
Residential Tenancies Tribunal Act

(b) Bond
For unfurnished premises the bond is 4 weeks rent, for furnished premises (less than $250) bond is 6 weeks. For rents exceeding $250 there is no limit on the bond. Condition reports are compulsory. All the rental bonds are to go within 7 days of receipt to the Rental Board which acts as an independent custodian of all the funds. The Board comprises senior public servants. Since January 1, 1990 the Board has paid an amount that includes an interest component to the lessee on the vacation of premises. The rental bond interest account is also responsible for contributing to the cost of administering the Residential Tenancies Act and the Residential Tenancies Tribunal Act.

(c) NSW Residential Tenancies Tribunal

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32 Ibid., p.22.

33 Ibid., pp.7-8.
The NSW Residential Tenancies Tribunal (NSWRRT) was introduced in 1986 with additional functions given to it by the Residential Tenancies Act 1987. With the election of a Liberal Government in 1988 it was altered to a “much less tenant-orientated tribunal”. 34 The NSWRTT objective is to oversee applications covered by the Act by conciliation rather than adjudication whenever possible. (see reading No. 6) In an article by James Taylor in 1995, he stated that the RTT was mainly utilised by landlords, with 85.7% of applications made by landlords. Taylor calls for greater efforts to alert tenants of their rights and the services provided for them by the RTT. (see reading no.6)

10. QUEENSLAND:

A Residential Tenancies Review Committee was established in April 1991 in Queensland to examine a more effective “practical and progressive legal regime for determining relations between landlords and tenants in accordance with social and economic changes”. 35 The report contained 57 recommendations, with the first suggesting that the general scheme of NSW legislation be adopted for drafting of Queensland legislation and promoted the establishment of a Residential Tenancies Tribunal.

(a) Legislation

Residential Tenancies Act 1975

Rental Bond Act 1989

Mobile Homes Act 1989

(b) Bond

The Rental Bond Act provides for the establishment of a central authority to administer the holding of bond monies and commenced operation in south-east

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Queensland on December, 1 1989, becoming state-wide on March 1, 1990. The Rental Bond Authority accepts bonds from landlords within 14 days of receipt with agents having one month to lodge bonds. The legislation does not specify the amount of bond required. Condition reports are compulsory and interest earned on the bond is used to cover the administration of the Rental Bond Act, rental advisory services, the provision of residential accommodation in research. Disputes can be heard by the Small Claims Tribunal.

11. SOUTH AUSTRALIA:

(a) Legislation

*Residential Tenancies Act 1978*

*The Retirement Village Act 1987*

*The Housing Co-operatives Act 1991*

(b) Bond

Landlords and agents are required to lodge bonds in an account with an approved financial institution within 7 days of receipt for landlords and 28 for agents. The maximum bond for rent of $150 per week or less is 4 weeks rent and unlimited if over this amount. Interest is held in the approved fund to administer the Residential Tenancies Tribunal or to compensate parties for breaches.

(c) South Australia Residential Tenancies Tribunal

The South Australian Residential Tenancies Tribunal administers the provision of the *Residential Tenancies Act* concerning all private rental agreements between landlords and tenants. RTT is responsible to the Minister for Consumer Affairs. All Bond money is received by landlords from tenants and held at the branch office until completion of the tenancy when it is dispersed to the relevant parties. The RTT has a free service for hearings on disputes and conciliates where possible.

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17 Ibid., p.23.
18 Ibid., p.23.
12. TASMANIA:

(a) Legislation

*The Landlord and Tenant Act 1935*

*Substandard Housing Control Act 1973*

(b) Bond

Tasmania has no legislative control on bonds.  

13. VICTORIA:

Over three quarters of a million people are tenants living in rental properties in Victoria. This accounts for approximately 20% of Victoria’s population.  

(a) Legislation

*Residential Tenancy Act*

*Caravan Parks and Movable Dwellings Act 1989*

*Rooming Houses Act 1990*

*Retirement Villages Act 1986*

(b) Bond

In Victoria, when renting, one month’s rent is usually paid in advance along with a bond of the same amount. If the premises are more than $200 a week or the landlord’s long term principal place of residence, an unlimited amount of bond can be requested. The landlord must give the lessee a *Statement of Rights and Duties* and a *Condition Report* which must be filled in and returned in three working days. The bond is by law deposited by the landlord/agent into a government approved trust account. The landlord must advise the lessee in writing details regarding the bank and the account where the bond has been lodged. Interest accrued from the account is paid to the State Government and makes up the Residential Tenancies Fund which in turn funds the

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Residential Tenancies Tribunal, the Tenants Union and Tenants Advice Services. Interest is not paid to renters.

When the tenant leaves a premises the landlord must return the bond within 14 days of vacating the premises. If the landlord wishes to keep some of the bond for repairs, she/he must claim by applying to the Residential Tenancies Tribunal within 14 days of the end of the tenancy. The Tribunal will use the *Condition Report* as evidence. If bond has not been received with 14 days, or a letter of notice, the lessee may write to the landlord demanding the money be returned and an application for a hearing with the Tribunal can be lodged. \(^{42}\)

After numerous submissions during 1991 consideration was given to a proposal requesting the establishment of a Rental Bond Board through the introduction of the *Rental Bond Board Bill*. This was abandoned in early 1992. The Bill included provisions for:

...payment of bonds to the Rental Bond Board, to establish a Tenancy and Residency Fund and to provide for the investment of and payments of the fund, to amend the Residential Tenancies 1980, the Caravan Parks and Movable Dwellings Act 1988 and the Rooming Act 1990 and for other purposes. \(^{43}\)

See Parliamentary debates at reading no. 7

(c) Victorian Residential Tenancies Tribunal

The Tribunal was established under the *Residential Tenancies Act* 1980, is administered by the Office of Fair Trading, and funded by the Residential Tenancies Fund collected mainly from interest from security deposits. The Tribunal can negotiate issues like repairs, rent increases or compensation, with a hearing overseen

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by a referee who has the power to make decisions about any problems relating to tenancy, whether or not there is a written agreement. Applications cost an initial $10 and a hearing date should be set between four to six weeks of lodgement. Interpreters are available.  

(d) The Tenants Union of Victoria

The Tenants Union of Victoria is a free service, established in 1974, and is available to all tenants. Services include legal advice and interpreters through the union or several of the Tenants Union branches. The Union presents the tenants' viewpoint through videos, seminars, publications, radio shows, displays and a regular newsletter. The Union also lobbies for law reform. The Union provides a direct advice service to over 17 000 tenants each year.

14. WESTERN AUSTRALIA:

A recent Australian Bureau of Statistics survey indicated that there are 85 000 renters in Western Australia (WA) with 60 000 of them not using agents. It is therefore important in WA for landlords and tenants to be aware of their rights. A Property Condition Report and a security bond equivalent to four weeks rent is required. An estate agent can also charge the tenant a Letting Fee (proposed to be valid until January 1, 1997) not exceeding one week's rent. Help can be sought at the Housing and Real Estate Directorate at the Ministry of Fair Trading. Under the Act the owner is required to give a copy of the agreements as well as a statement of rights and obligations. The Act covers some permanent residents in caravan parks, but does not apply to hotels, motels, educational institutions, colleges, hospitals, nursing homes, clubs, or eligible organisations operating homes for aged or disabled people.

(a) Legislation

Residential Tenancies Act 1987

(b) Bond

The maximum bond is 4 weeks rent and an extra $100 may be charged if a cat or dog are to be kept on the premises.

When a tenant pays the bond, the owner must give a receipt immediately, showing the name of the person who has paid, the premises involved, the amount and the date.

The owner must pay the bond within 14 days (or 28 days if a Real Estate Agent is handling the premises) to the Bond Administrator, or an authorised financial institution (bank, building society, credit union).

The bond must be held in a joint account showing the names of the owner and tenant. To facilitate this, bond monies must be lodged using Form 8 (Lodgement/Variation of Security Bond Money), although financial institutions may have their own version of this form. The signatures of both the owner and tenant must be on the form.48

(see reading no.8 for further information)

In July 1996 the Ministry for Fair Trading produced a handbook for landlords and tenants to coincide with changes to the Residential Tenancies Act including the way in which bond money is lodged and how tenancies can be terminated if tenants fall behind in their rents.

15. CONCLUSION:

The many issues surrounding tenancy legislation in Australia appear to be under continuous review. The NT Government has been addressing the many issues facing Housing Commission tenants, private renters, agents and landlords in the Territory for many years. The proposed legislative changes are timely as is the education of Territorians in respect to their rights and duties in regard to tenancy laws.

16. READING LIST:


