

**Response to the
Queensland Community Affairs Committee
Review
of
Residential Tenancy
and Rooming
Accommodation
Amendment Bill 2011**



**Tenants' Union
of queensland inc.**

July, 2011



Introduction

The Tenants' Union of Queensland Inc. (TUQ) is the only statewide community based organisation that provides services for, and seeks to represent the interests of residential tenants in Queensland. The Tenants' Union was formed in 1986, and is a non-profit, community legal service, incorporated under the Queensland Associations Incorporation Act 1981. The organisation is managed by the Steering Committee, a voluntary management body made up of individuals from a variety of backgrounds.

The Objectives of the TUQ are to:

to be a charitable benevolent institution providing direct assistance and relief to Queensland tenants with a particular focus on those who are suffering from poverty or destitution, and tenants who are economically and socially disadvantaged, in order:

- (a) to improve private, public and community residential tenants' conditions;
- (b) to provide legal advice, advocacy and information to tenants, particularly those from disadvantaged socio-economic backgrounds in relation to their rights as residential tenants;
- (c) to enhance and protect residential tenants rights, including those in private, public and marginal tenures;
- (d) to research common issues affecting residential tenants;
- (e) to coordinate and organise law reform activities affecting tenants' rights;
- (f) to educate the community about residential tenancy law and tenants' rights;
- (g) to educate residential tenants about residential tenancy law and procedures;
- (h) to advocate for safe, secure and affordable housing for all tenants; and
- (i) to support advice and advocacy services for tenants.

The TUQ has a long history in lobbying for protection from the unfair practices of tenancy database operators stemming back more than fifteen years.

After many years of lobbying about the issue, TUQ was involved in the development of the Queensland tenancy law protections. Following this, we have been closely involved in the process of developing a national standard for protections through the Standing Committee of Attorneys-General and Ministerial Committee on Consumer Affairs. The TUQ has continued our involvement in the process of amending Queensland tenancy laws in line with the national uniform legislation.

The TUQ would like to thank the Community Affairs Committee for the invitation to participate in reviewing the policy implications of proposed changes to tenancy database protections in Queensland.

TUQ would welcome an invitation to appear at the public hearing scheduled for August 24 in order to expand on our concerns and recommendation to amend the proposals.

Our Response

The TUQ has only responded to the issue of listing criteria which we consider may have unintended consequences, in particular of extending the reasons a person can be listed. We also make comment on the issue of a debt being proven.

Other sections of the proposals are acceptable.

1. Section 459 Restrictions on listings

The TUQ is concerned this section will expand the lawful reasons for listing a tenant from those currently available. From discussion with the Residential Tenancies Authority (RTA) the TUQ understands this is not the intent of the legislation, rather a possible unintended consequence of the drafting process. TUQ requests that this section be reviewed to restore and limit the listing criteria to that which is currently available.

Current provisions under the *Residential Tenancies and Rooming Accommodation Act (2009)* [the Act] allow the listing of a tenant who has been evicted for rent arrears **only** when that tenant owes more than any bond held at the time the tenancy ends. Further, in regard to other 'listable' matters, only 'Repeated Breaches' and 'Objectionable Behaviour' terminations allow for a listing where the matter is not related to monies owed. Repeated Breach terminations are allowable only for certain types of breaches identified in the Act.

The TUQ believes that the wording within the *Residential Tenancies and Rooming Accommodation Amendment Bill (2011)* [the Bill] again opens up the types of matters which can be listed.

The issues arise from the following:

S459(1)

(c) because of the breach, either—

(i) the person owes the lessor an amount that is more than the prescribed amount for the residential tenancy agreement; or

(ii) the tribunal has made an order terminating the residential tenancy agreement; and

(d) the personal information—

(i) relates only to the breach; and

(ii) is accurate, complete and unambiguous.

By the use of the term 'or' between subsections (c)(i) & (c)(ii) tenants may be able to be listed when the tribunal terminates the agreement because of any breach.

The RTA reports that the intention of subsection (c)(ii) is to allow listing such as 'objectionable behaviour' where the termination order is directly related to the breach and named in the order i.e. termination for objectionable behaviour. However, the wording is sufficiently unclear as to allow listing reasons to be broadened in the following two ways:

- 1) The wording is not clear enough to determine that the termination for the breach means only breaches where the Act identifies a specific breach in the termination order as opposed to a termination for any breach made under an application for failure to leave for unremedied breach.
- 2) A tenant being evicted for rent arrears either by tribunal order or on a notice to leave for an unremedied rent breach may be listed even if they do not owe more than any bond held at the time the tenancy ends. Currently this is not the case – the tenant must owe an amount over any bond held.

The current listing criterion enshrines one of several principles which shaped the development of residential tenancy database reforms in Queensland in 2002/03 and continued through the national

process of uniform legislation. That is, there should be a financial loss to the lessor before they can list a person (since the bond is the tenant's money held in trust to protect the lessor against monies owed for rent or damages, it should therefore be taken into account when considering the listing threshold) or the tenant has engaged in a behavioural issue which the Tribunal determines serious enough to terminate the tenancy. Current laws identify the latter as objectionable behaviour and repeated breaches (as noted above the Act sets out the specific types of breaches covered under this section).

The TUQ believes the draft provisions should be amended to capture the principle above and restored to equate them to the current restrictions on listings set out in the Act. Protections for Queensland tenants should not be watered down as a consequence of national uniform legislation.

The process of development of the national uniform legislation allows for some variations amongst jurisdictions. Page 2 of the Bill's explanatory notes states:

"Implementation of the uniform law by states and territories will ensure national consistency in relation to minimum standards. As noted in relation to New South Wales and Victoria, a jurisdiction may add to the rights, obligations or limitations by including or adopting a higher standard for them".

To ensure the listing criteria is not expanded and to restore the meaning of Bill's s459 to equate to the current listing criteria, the TUQ makes the following recommendation.

Recommendation:

That the current s459(c) be removed and replaced with:

(c) either-

- (i) because of the breach, the person owes the lessor an amount that is more than the prescribed amount for the residential tenancy agreement; or*
- (ii) the tribunal has made an order terminating the residential tenancy agreement on the grounds of objectionable behaviour or repeated breaches; or,*
- (iii) the person owes an amount to the lessor under a conciliation agreement or tribunal order, the time for paying the amount has passed, and the amount that is more than the prescribed amount for the residential tenancy agreement.*

2. Section 459 Restrictions on listings - Debts should be proven

The TUQ believes the proposed changes should go further than the current provisions. Under the Act, a tenant can be listed because of an alleged debt greater than the bond.

The following scenario is one which the TUQ often encounters. Tenants will not pursue the return of the bond to them because for example, they did not have time to arrange carpet cleaning and they owe a few days rent as the agreement ended just after the last rent payment period. The tenant leaves the bond for the lessor or agent to claim. Later, often months or years, the tenant discovers

they are listed on a tenancy database for an alleged debt, never conferred by a court or tribunal, sometimes for several thousand dollars on top of the bond that was claimed by the lessor.

The TUQ's view is that an 'amount owed' should mean an amount under a conciliation agreement, court or tribunal order and not just an unsubstantiated claim by the lessor or agent.

The restriction of a debt being conferred by a conciliation agreement, a court or tribunal should be addressed in s459(c). This could be achieved by using the Recommendation below rather than the one above.

Recommendation:

That the current s459(c) be removed and replaced with:

(c) either-

- (i) because of the breach, the person owes an amount to the lessor under a conciliation agreement or tribunal order, the time for paying the amount has passed, and the amount that is more than the prescribed amount for the residential tenancy agreement; or*
- (ii) the tribunal has made an order terminating the residential tenancy agreement on the grounds of objectionable behaviour or repeated breaches.*

From: Coordinator [coordinator@tuq.org.au]
Sent: Monday, 15 August 2011 4:49 PM
To: Community Affairs Committee
Subject: Residential Tenancies and Rooming Accommodation Bill 2011

Dear Mr Hoolihan,

Recently the Tenants' Union of Queensland (TUQ) made a submission to the Community Affairs Committee's inquiry into the *Residential Tenancies and Rooming Accommodation Bill 2011*.

The date for written submission has now passed, however, the TUQ would like to raise one further issue. I apologise for any inconvenience this causes you.

The TUQ has seen a tenancy database operator (which holds a large market share in Queensland) argue that the *Residential Tenancies and Rooming Accommodation Act 2008* does not apply to them. They have done this in written submissions to both the Queensland Civil and Administrative Tribunal and previously to the Small Claims Tribunal. I have personally sighted these submissions.

In part, their argument relies on s5 Objects of the Act and that tenancy database operators are not named there. Whilst the TUQ does not agree with this argument – a view we understand is shared by the Residential Tenancies Authority – it may be useful to include a reference to the regulation of tenancy databases in this section to clarify its application.

We also received your invitation to appear at the hearings on Wednesday August 24 between 11 – 11.20am. TUQ would like to advise that Julie Bartlett (TUQ Legal Services Solicitor) and I will be in attendance. Thank you for the opportunity to appear.

Yours sincerely,

Penny Carr

Penny Carr | Statewide Coordinator

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16/08/2011

3 sheets of A4 paper = 1 litre of water

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