

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024

Submission No: 59
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Publication:
Attachments:
Submitter Comments:

SUBMISSION ON TENANCY LAW REFORMS

WHO AM I?

I am a tenant, a tenant advocate and adviser with over 30 years of experience for Tenants' Union of Qld, The Tenant Advice & Advocacy Service (TAASQ) as well as Tenants' Qld QSTARS Program. Additionally, I have worked in homelessness for HPIQ, Smart Services Qld as a Professional Support Officer.

I write this submission as a tenant and not on behalf of any organization. I believe that as a person who advises tenants daily on a state-wide line that I am well placed to comment on this legislation from a tenant's point of view both individually and collectively as it currently stands.

Historically I have inputted into tenancy legislation in my role in TAAS(Q) as statewide representation of the program during legislative review, as a member of the Tenancy Database Action Group and as a member of the RTA Stakeholder Working Group representing Tenants' Qld QSTARS.

INTRODUCTION

Submission is on the following issues:

- 1. RENT/DISPUTING SIGNIFICANT CHANGE**
- 2. FEE FREE RENT PAYMENTS**
- 3. ENTRY**
- 4. BOND REFUNDS**
- 5. RENTAL APPLICATIONS**
- 6. REMOVAL OF END OF LEASE AS GROUNDS TO END TENANCY**
- 7. ROOMING ACCOMMODATION REQUIREMENT FOR WARRANTS OF POSSESSION**
- 8. CODE OF CONDUCT WITH PENALTY UNITS**
- 9. TIGHTENING OF TENANCY DATABASE RULES**
- 10. ALTERATIONS**

1. RENT/DISPUTING SIGNIFICANT CHANGE

While it is very welcome that rent increases will be limited to once every 12 months, this does not prevent rent gouging by lessors and agents. Increasing rents to unaffordable levels is a way of evicting tenants. I have seen rents being almost doubled on a new lease offer to tenants which is completely unreasonable and unethical but apparently not unlawful. It is recommended that there be a cap of 10% on rent rises to prevent unjust rent rises and evicting tenants into homelessness with unaffordable rents.

Unfortunately, due to the fact that the housing crisis has been going on for such a long time, tenants who were hit with huge and unaffordable rent increases 12 months ago are now being hit again unjustly. This is too much for these households to bear and is leading to homelessness due to rent gouging. Without a cap on rents what will the government tell these tenants at their next rent rise when they are seeking assistance from homeless services?

While there are provisions in the act to dispute excessive rent increases as a significant change in a subsequent agreement, there are serious flaws in this current legislation. Firstly, it requires a tenant to

sign the lease before disputing it within 30 days therefore binding themselves to what is often an unaffordable ongoing rent. Secondly, as the matter is non-urgent there is a long wait for the matter to be heard in QCAT which can take 2-6 months after conciliation. During that time the lease is often up for renewal again and /or the tenancy is over with no ruling on the significant change.

If this legislation is to be taken seriously and be used effectively as it was intended the following changes need to be made:

1. Applications about a significant change in the subsequent agreement need to be ruled as urgent.
2. If the ruling is that there will be no or little rent relief in the QCAT decision where the increase is at least 10% or existing rent then the tenants need to have the option of ending the tenancy on a notice period of 14 days.

Without these changes having this option is the act is ineffective and clearly against the intention of the original legislation.

2. FEE FREE RENT PAYMENTS

Currently countless Queensland tenants are being forced to pay additional fees just to pay their already inflated rent. Many agencies outsource the payment of rent to third party 'rent card' organizations. These organisations require a fee to set up the account and then charge a fee for each and every transaction. These are third party businesses and if there is a dispute which arises between the tenant and the rent card provider these disputes cannot be taken through dispute resolution processes under the act.

There are two issues to address here. Firstly, under Section 171 of the current act it is an offence to require that a tenant use a particular provider of services as part of their contract. Using rent card agencies is clearly a collateral contract and this should be articulated and forbidden under any amended legislation.

Secondly, tenants should not have to pay money for the privilege of simply paying their rent. If agents want to outsource this rent payment work to these agencies then they need to factor this amount into their business practices. It is unfair, particularly in the current climate where rents increases are excessive, to then charge on top of that ongoing fees for simply living up to your obligations as a tenant. I have received countless complaints from tenants statewide about these practices.

Currently under the act there is a requirement that if it is a non-approved rent payment method which is offered then that the tenant must be offered at least two other approved methods. This gives the illusion that the tenant has a choice. Unfortunately, due to the age of the current legislation the approved methods are listed such as cheque. All an agent or lessor has to do is to put down the other two approved rent payment methods as cheque or EFTPOS and the tenant would be forced to use the rent card. This is a common tactic used by agents. Rent payment methods need to be updated in line with current practices.

3. ENTRY

There are already rules which allow a lessor or agent to enter premises due to emergency situations. The other reasons for entries such as repairs, showing the premises and valuations should have a longer period than 24 hours. It is difficult to imagine how a lessor or agent would be disadvantaged by changing this time from 24 to 48 or 72 hours. This change would, however, be a considerable advantage to tenants.

Obvious advantages are being able to arrange to be home from work or school or childcare arrangements which would make entry easier for all parties and reduce the number of disputes about entry.

While entries for inspection are currently at a three-monthly interval, this is quite intrusive. This is particularly intrusive for long-term tenants where there has never been an issue. It is suggested that after the first 1 year of tenancy if there has never been an issue that the entry times be extended to 6 months.

In regard to taking of pictures this is another matter where there is often tension between tenants and lessors/agents due to privacy. It is suggested that there be some specific instructions re this process if it has to be done. This should include requirements that the pictures only be of those things which may need repair or maintenance, not include any of the tenant's belongings and be required to be securely stored. These requirements are not unreasonable requirements considering that people are taking pictures inside a person's home. Tenants often have concerns about their belongings being shown and children's toys being in pictures due to security concerns. This would seriously reduce the number of disputes in this area.

4. BOND REFUNDS

I am completely in favour of the need for providing documents to substantiate bond claims by agents and lessors. Ambit claims made on tenant's bonds is a constant issue and very frustrating for tenants. In order for a bond dispute to be resolved with conciliation and Tribunal resolution can take 3-7 months. This is a long time for a bond to be held up without merit. Holding up four weeks rent for such a long period means that a tenant has to come up with additional money for a bond unfairly

Agents and lessors claiming bonds without just cause is often used as a tactic to put pressure on tenants to agree to pay for things which are not their responsibility. Tenants often are forced to agree to these things in order to promptly resolve the remaining refund.

With the current high rents in Queensland this amount is often difficult to come up with as part of housing expenses when a tenant already has an existing bond. Requiring some evidence of an alleged claim would lead to a more just and expeditious process re bond refunds it would be of great help to tenants to prevent homelessness and also reduce ongoing demand for bond loans through the Department of Housing for low income households.

5. RENTAL APPLICATIONS

I totally support limiting what information can be required on a tenancy application. Currently throughout Queensland there are many inhouse applications forms which agents have put together. Many of these applications contain questions which are not relevant to a tenant's past tenancy history and ability to pay rent. Some applications contain questions such as 'how much do you spend on groceries per month, recreation, childcare or medications?' Agents and lessors are not credit providers as bond and rent is paid in advance. They are not entitled to give this kind of scrutiny into a prospective tenant's privacy.

Prospective tenants are often astonished that agents demand to see full bank account statements containing private information about the tenant. There are plenty of opportunities for an agent to determine if a tenant can pay the rent such as pay-slips etc and this scrutiny of private bank accounts is unacceptable. This is particularly intrusive in the current climate when most people pay the majority of their bills and so forth by electronic transaction.

6. REMOVAL OF END OF LEASE AS GROUNDS TO END TENANCY

The government is to be congratulated for removing without grounds provisions from the act for periodic tenancies to help to prevent homelessness. As no doubt can be seen from the rather hysterical submissions from industry on that matter previously, there has been no significant change to investment in property due to these tenancy law changes. There is an exhaustive list where lessors can seek to end the tenancy due to a valid reason. However, end of lease remaining as a ground leaves the door open for retaliation without a reason and without right of reply.

The grounds of end of lease should be removed from the upcoming legislation to prevent homelessness and reprisal. As can be seen from the earlier amendment to the legislation this will have no negative impact on the industry and will only impact positively in preventing homelessness.

7. ROOMING ACCOMMODATION REQUIREMENT FOR WARRANTS OF POSSESSION

Currently there are four groups of Queensland tenants who are being highly disadvantaged by a flaw in tenancy legislation. Those groups are the elderly, students, disabled hostel residents and rooming house residents. These groups are covered as residents under the act. Currently underpinning their lack of rights is the fact that they can be evicted sometimes immediately without any right of reply. The legislation allows for these most vulnerable of renters to be evicted on the same day for any alleged serious nuisance. They do not have to have any scrutiny on these allegations and no natural justice is served as no Tribunal hearing is required to evict them at whim and through misuse of power.

Many of the most unprofessional providers are renting out rooming houses and student accommodation and have no qualms about evicting residents at will. I have spoken to residents who were evicted for alleged 'serious nuisance' for simply asking for a rent receipt or asking for an entry notice for entering a room.

It is vital for residents to finally be included as first-class citizens by allowing them the justice and due process of the Tribunal deciding if the residency is to be ended. There is a vital need for rooming accommodation residents to be protected by being given the right of a Warrant of Possession hearing in the Tribunal. Without this change more rooming residents will continue to become homeless unjustly adding to the burden on government services not to mention the individual hardship of the people and their families.

8. CODE OF CONDUCT WITH PENALTY UNITS

One of the most common issues raised on our statewide advice line over the years is the unprofessional and fraudulent conduct of real estate agents. These issues include misrepresentation, harassment, intimidation and abuse. Currently there is no option for tenants to make agents accountable for their conduct. The Office of Fair Trading will not act on tenants' complaints and is a dead-end option, of which agents are only too aware.

In the current climate of the housing crisis, many agents have been even more threatening with tenants advising that they will give them a bad reference or not renew the lease if they don't let them do what they wish in spite of legislation. For example, a tenant can be threatened with a

bad reference or non-renewal of lease if they refuse an open house or a change of rent payment method. Tenants are terrified of eviction and this fundamentally decreases their ability to exert any rights which they do have under the legislation. If the government wants this tenancy legislation to be effective and fair for all parties then this should be a priority.

Without a code of conduct with penalty units the legislation will continue unfairly to affect tenants without any right of reply or natural justice. In order to clean up the industry there needs to be this code of conduct for agents which include penalty units which can be administered by the RTA Compliance Unit.

9. TIGHTENING OF TENANCY DATABASE RULES

The tenancy database TICA is currently acting unlawfully outside of the rules listed in the current legislation. This organization operates what is called an 'enquiries database'. This database is a list of people who have inquired to find out if they are listed on TICA. Whether they are listed or not is irrelevant as even if not listed they are effectively listing themselves by making this enquiry.

As the act states that a tenant may only be listed for reasons stated in the regulations this means that TICA is unlawfully listing tenants on their database for no reason. What makes this particularly dangerous is that if a person is fleeing from domestic violence then anyone who has access to TICA as a member can find out where a person is applying for properties. In the current climate of seeking to prevent DV and support victims this loophole needs to be closed to protect the lives of vulnerable women and children. TICA is throughout Australia and New Zealand so it makes it extremely dangerous for DV victims.

Tenancy database regulations need to be clearer that these 'enquiries databases' are unlawful.

10. ALTERATIONS

The ability for tenants to have some input into alterations according to their changing needs is very welcome. Currently a tenant who becomes disabled or has a disabled child cannot alter their premises without the written consent of the lessor or agent. This severely limits their ability to remain housed.

LIST OF RECOMMENDATIONS:

- 1. Rent increases should be capped at 10%***
- 2. Disputes re significant change in subsequent agreements should be classed as urgent matters for QCAT.***
- 3. If a tenant is not successful in their application to dispute a significant change in subsequent agreement due to excessive rent increase of at least 10%, they should be able to be terminated on a 14 day notice without penalty***
- 4. Tenants need to be able to pay their rent without additional fees and charges.***
- 5. The approved rental payment methods need to be updated to continue to be relevant and not allow for loopholes.***
- 6. Entries other than routine inspections should be extended to 48 or 72 hours.***
- 7. Entry for routine inspections should be increased from 3 months to 6 months after one year of tenancy if there are no issues.***
- 8. The taking of pictures should be regulated to include what can be taken, that they cannot include tenant's possessions and that they are securely stored.***

- 9. When agents or lessors make claims on a bond they must be accompanied by some evidence to substantiate that the claim is with merit.**
- 10. Rental applications need to be limited to what personal information is able to be requested from an agent or lessor.**
- 11. End of lease grounds need to be removed from the act in line with current rules for periodic tenancies.**
- 12. There is an urgent need for residents covered under rooming accommodation rules to be protected by a requirement of a Warrant of Possession in the Tribunal to prevent homelessness.**
- 13. There is a need for a code of conduct for agents and lessors which include penalty units to be administered by the RTA.**
- 14. Tenancy database rules need to be clarified that enquires databases are unlawful and this is leading to danger to DV victims.**
- 15. Tenants need to have some control over making necessary alterations on their property.**

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