



STOP PRESS

IMPORTANT INFORMATION ABOUT PROPOSED CHANGES TO TENANCY LAWS

A consultation draft of the proposed Residential Tenancies Bill 2009 (the Bill) has been released by the Office of Fair Trading in late 2009.

It's important to note that nothing will change immediately, as the Bill has not yet been introduced into the NSW Parliament. REINSW understands that this is scheduled to occur in May 2010, so there is still time to lobby for changes to the Bill before it is introduced and before Parliament considers it.

It is not possible in this newsletter to outline all the proposed changes contained in the 123 pages of the Bill. However, set out below is a selection of some of the most significant changes:

- **Fixed term tenancies - end of certainty of tenure for landlords and tenants.** Section 98 of the Bill will enable tenants to break a lease, **during** the fixed term, without any special grounds, by giving 14 days notice to the landlord. This break clause will be subject only to the payment of a 'break fee', which will not exceed 6 weeks rent. Details of the maximum amount of 'break fees' for long-term leases (over 3 years) have not been released. What is the point of a landlord entering into a fixed term tenancy that will be unable to be enforced?
- **Periodic tenancies - 'no grounds' termination notices.** Section 85 of the Bill increases the notice period required to be given by landlords to tenants (who are out of fixed term) from 60 to **90 days**. While the section provides that the CTTT must now make a termination order if the notice has been validly drawn and served, the Bill still gives the CTTT jurisdiction to determine when vacant possession is to occur, if a tenant challenges the landlord's termination notice. The Bill does not set a maximum time limit between the date the CTTT makes a termination order and the date it nominates that vacant possession is to be given up by the tenant. Once served with a 90-day termination notice by the landlord, a tenant can give vacant possession at any time. Section 110(2) of the Bill provides that a tenant will only be liable to pay rent until the date they give vacant possession.
- **Frustration of repossessions by tenants.** Section 89(2) of the Bill provides a mechanism whereby tenants who are already (or habitually) in arrears, can further frustrate a landlord's attempt to regain possession of their property. The effect of the section is that orders for possession and warrants for possession issued by the CTTT, will cease to have effect if the tenant pays their arrears at any time prior to vacant possession being given, or the warrant enforced. The tenant will not have to apply to the CTTT seeking the suspension of an order for possession or warrant. The section also makes no provision for the recoupment by the landlord of the costs incurred in obtaining the order for possession or warrant.
- **Cosmetic changes.** Section 66 of the Bill provides that landlords must not unreasonably withhold consent "to a fixture, or to an alteration, addition or renovation that is of a minor or cosmetic nature". While the section provides that the costs of installation are to be met by the tenant, no definition of what "a minor or cosmetic nature" is contained in the Bill. This section is backed by another provision (section 68), that a tenant may apply to the CTTT for an order that the tenant may install a fixture or make a renovation, alteration or addition to the residential premises without the consent of the landlord. While the Bill contains provisions concerning the removal, rectification and cost of repairs for such matters at the end of a tenancy, the potential for default or significant disputes concerning this area alone is enormous. Disputes will occur both at the beginning and the end of tenancies and landlords risk being considerably out of pocket as a result of these changes.

- **Partial transfers of tenancies or sub-letting.** A landlord's right to decide who inhabits a property will be able to be challenged. Section 75(5) of the Bill will enable a tenant to apply to the CTTT to review a landlord's refusal of consent to a partial transfer or sub-letting to an additional tenant, or tenants, that the landlord would not otherwise accept as a tenant. The CTTT will be able to permit the partial transfer or sub-letting if the landlord's failure to consent was unreasonable (the word unreasonable, is not defined). The scope for dispute here is obvious.
- **Rent control.** Section 44 of the Bill does not, unfortunately, clarify some of the past uncertainty (and case law) relating to what matters the CTTT must, or may, take into account when hearing an application by a tenant that rent, or a rent increase, is excessive. For example, there is no compulsion in the Bill for the CTTT to take the market rent of the premises into consideration when making a determination.

Other changes

There are a myriad of other provisions which substantially shift the balance of power further in favour of tenants. Some examples are:

- Section 14(1) of the Bill provides that a landlord must ensure that a residential tenancy agreement is in writing, otherwise they can be fined.
- Section 23(2) of the Bill prohibits an agent from charging any lease preparation fee.
- If a tenancy has already commenced, a landlord must give the tenant written notice of the landlord's "intention to sell" the residential premises **before preparing a contract** for the sale of the premises (section 53(1)) – there is no definition or further information as to when an "intention to sell" is formed in a landlord's mind.
- Air-conditioning (cooling) will be included as an urgent repair item (section 62(j)).
- Section 84(2) of the Bill will require landlords to give 30 day's notice to end a fixed term tenancy (currently 14 days).
- A tenant may terminate a tenancy, without compensation to the landlord, by giving 14 days notice where they have accepted a place in social housing or an aged care facility (sections 102(1)(a) and (b)).
- The overview of the Bill provides that the *Landlord and Tenant (Rental Bonds) Act 1977* will be repealed and similar (but not identical) Rental Bond provisions will now be incorporated into the Bill. By way of one example of a change, the current provision allowing an unlimited bond or furnished premises rented for over \$250 per week, will be repealed. The bond can be paid in installments prior to the tenant moving in.
- Tenants that send cheque/money order a receipt must be sent back by mail.
- Tenants requesting ledgers must be sent out in the mail.
- Rent cards with fees not allowed must be free for the tenant, no charges.
- No interest accrued on bonds, for tenants/landlords. Interest earned to the government.
- Full disclosure of property eg. Murder, drugs, etc (Gonzales Case) when marketing the property for rent.

Other changes of note are:

- The doctrine of 'material fact' now appears in the Bill (section 26(1)), in addition to being found in the *Property, Stock and Business Agents Act 2002*.

- Section 203 of the Bill introduces a system of Penalty Notices for prescribed offences, but the majority of details concerning penalty notices will be contained in the Regulations.

The Bill will entirely change the manner in which property managers do business, necessitating changes in day-to-day practices and procedures.

Property Owners will not tolerate this and sell, due to the red tape which is placed on them.

NSW is in a crisis with housing and accommodation, if this bill is introduced another nail is driven in the coffin, driving the NSW investor out of our state. There will be no incentive to have a rental property.

What now?

REINSW believes that the Bill moves the balance of power even further away from the owner/investor and towards the tenant but, in doing so, creates the potential for tenants to suffer significant detriment. There is no point having tenant friendly legislation when there are no landlords!

The Bill does address some instances where the current regime is deficient or unclear – such as new provisions to regulate the disposal of goods left or abandoned by tenants, better methods for service of termination notices, and provisions relating to tenancies where tenants die, or AVOs are involved – but REINSW does not believe that there is a need, or justification, for some of the wholesale shifts in policy introduced by the Bill.

REINSW believes that far from reducing the levels of disputes, the Bill will introduce a regime whereby the potential for disputes will increase **significantly**. In a market where many landlords are already deriving a marginal return, measures such as many of those proposed by this Bill may be the straw which breaks the camel's back. There have been no guarantees that the resourcing of the CTTT will be increased, or that a specialised Residential Tenancies Division of the CTTT will be established, to improve consistency of decision making in the CTTT.

The process of reforming the residential tenancies regime commenced in 2005. REINSW has already lodged two submissions, in 2005 and 2007 concerning the changes proposed at that time. REINSW has consistently lobbied against many of the changes which appear in the Bill and will continue to do so.

REINSW, including the Property Management Chapter Committee, prepared a submission in response to the Bill. REINSW has also been active, and will continue to be active, in the media.

We need your support to try and stop this from happening. Speak with your local member of parliament and let them know that you as the property owner are not happy with the proposed residential tenancy reform in NSW, it will be death to us all!!!!

Fairfield Electorate – J Tripodi c/- Neeta City, Suite 6, Smart Street, Fairfield NSW 2165

Cabramatta Electorate – N Lalich, Suite 10/5 Arthur Street, Cabramatta NSW 2166

Liverpool Electorate – P Lynch, 100 Moore Street, Liverpool NSW 2170

Bankstown Electorate – T Stewart, Suite 1, 3rd Floor, 402-410 Chapel Rd, Bankstown NSW 2200

*(You can also read the **REINSW submission** on <http://www.reinsw.com.au/Advocacy/default.aspx> or email chapters@reinsw.com.au for more information.)*

From Len & Melina Pretti

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