

Colony47

LIFE SKILLS & OPPORTUNITIES

**SUBMISSION TO THE RESIDENTIAL TENANCY ACT REVIEW: FINAL
REPORT AND CONSULTATION PAPER**

February 2012

About this submission

Colony 47 welcomes the opportunity to make this submission. Colony 47 has long provided housing related assistance and advice to some of Tasmania's more vulnerable and marginalised households. Accordingly, our knowledge of how the current Act is utilised by these groups bears heavily on our responses to the recommendations. Therefore, whilst we support most of the recommendations contained in this final report, we have grave concerns about the removal of one provision (recommendation 13) because it is assumed to be rarely used; and reinterpretation of another (recommendation 5) because it is not perceived to be consistent with other jurisdictions. The arguments for these changes are not strong, and neither of these recommendations have been part of the review process to date.

We appreciate that to remain effective, residential tenancy law has to balance the interests of different stakeholders. We also appreciate that getting this balance right can be difficult. Nevertheless, we believe that enabling even the most vulnerable in our community to achieve greater long-term control over their circumstances, and in particular their capacity to remain housed, is a realistic expectation of any change to tenancy law in Tasmania.

Part 1 – Certainty of tenure

Recommendation 1

- Colony 47 supports, but with qualification, changing the Act to ensure tenants are provided a minimum of 42 [and maximum of 60] days notice for the non-renewal of a fixed term agreement.

It is the view of Colony 47 that without a window of time within which tenants could break their lease without penalty; this change will not necessarily achieve its intended aim of enabling tenants to secure alternate accommodation. Indeed, for many lower-income tenants the absence of such a window of time may render this amendment meaningless. Consider, for example, the following situation:

A lower-income person is paying 42% of their total fortnightly income on rent. If this person is on Centrelink payments alone, this could mean that they have as little as \$150 [a Newstart recipient] remaining each week to cover all other expenses. There is no capacity for this person to secure a new tenancy before the expiry of their current agreement if they cannot 'break' this agreement, as they cannot afford to pay rent on two properties at the same time.¹

¹ Currently, the Tasmanian Government funds the PRSS [Private Rental Support Service] and PRTSS [Private Rental Tenancy Support Service]. These two support services have the capacity to advocate for their clients, or in the case of the former service, provide financial assistance to ensure that the burden of paying 'double rent' does not place vulnerable households in an even more precarious position. The future of these services beyond 2012 is presently under review. We wonder therefore, given the current political and economic environment, whether

Colony 47 proposes that a simple amendment to this recommendation, which provides for a window of time before the lease-end-date within which a tenant could vacate the property without penalty, would have the required practical impact and would not unduly disadvantage owners.

Recommendation 2

- Colony 47 supports changing the Act so that fixed term agreements on expiry automatically convert to an agreement of no fixed term in those instances when the legislated minimum notice period to terminate or renew for a further fixed term has not been given.

Recommendation 3

- Colony 47 supports, but not without qualification, changing the Act to ensure tenants provide owners or their agents a minimum of 14 days notice for the non-renewal of a fixed term agreement.

To propose this amendment without any qualification of what non-compliance would mean is a concern. As already noted in the Colony 47 submission to the 2009 discussion paper, it is our view that any changes to the Act should aim to disadvantage neither tenants nor owners. Thus, whilst we do agree that it is reasonable to change the Act so as to provide owners with ‘some security ... around end of agreement arrangements’, the obvious matter of what non-compliance would mean does need to be addressed. For example, if the failure to provide this notice meant that owners or agents could claim, in lieu of this notice, two weeks rent from the security bond, then Colony 47 proposes that perhaps a ‘grace’ period also be legislated. Given the National Association of Tenant Organisations (2010:37)² has already identified a current ‘lack of support for vulnerable tenants to access information’, it is our view that such a grace period should go some way towards mitigating any unintended disadvantage to tenants.

Recommendation 4

- Colony 47 supports extending the minimum notice period required for foreclosure or mortgagee sale.

We wonder, however, why the notice period in these circumstances could not be 90 days rather than 60 days.

considerably more attention might not need to be focused on how the Residential Tenancy Act can contribute to the certainty or security of tenure of Tasmania’s lower-income households.

² National Association of Tenant Organisations, Penny Carr and Maria Tennant (2010) *A Better Lease on Life – Improving Australian Tenancy Law* National Shelter Report

Recommendation 5

- Colony 47 supports clarifying the meaning of ‘renovated’ and ‘another purpose’ in Section 42(1)(c) of the Act.

We wonder, however, why there is no recommendation to extend the current 14 days notice period required for terminating a no fixed term agreement given the recognition that longer notice periods are considered appropriate in most, if not all, other situations. It is the view of Colony 47 that an owner would be aware that they were intending to sell, renovate or use the property for another purpose more than 14 days out from this occurring, thus a longer notice period in these circumstances would not create any undue disadvantage to them.

- Colony 47 does *not* support allowing termination of a no fixed term agreement in order to rent the premises to family members.

Simply put, what is meant by a family member is an unanswerable question. It is a contested concept and thus it has a diversity of meanings. Accordingly, this recommendation would not contribute to the clarification of the meaning of ‘another purpose’; and would risk creating a massive loop-hole for retaliatory termination of tenancies.

- Colony 47 supports the requirement that an agency agreement be necessary evidence for giving notice on the grounds of sale.

Part 2 – Rent increases

Recommendation 6

- Colony 47 questions why it is necessary to ‘change’ the Act to allow for the level of rent for a property to be negotiated between the owner and the tenant at the beginning of a tenancy.

The danger here lies not in the principle behind this recommendation³, but in the possibility that it will be ‘read’ by owners and/or their agents as an ‘invitation’ to negotiate the level of rent with prospective tenants – to seek bids. Accordingly, this recommendation seems to add little, but risk a great deal. Not least, creating unnecessary confusion about what exactly a requirement that all rental properties be advertised or offered for rent at a fixed price might mean (Recommendation 8).

- Colony 47 supports limiting rent increases during a tenancy to once in every 12 months.

³ As discussed in the Colony 47 submission to the 2009 discussion paper, current tenancy law in each of Australia’s States and Territories does not prohibit tenants and owners negotiating the terms of tenancy agreements.

If Colony 47 was asked to select the one recommendation that they surmised would contribute most to reducing the risk of tenancy failure amongst Tasmania's lower-income households, it would be this recommendation.

- Colony 47 supports treating the extension or renewal of an agreement as part of an ongoing agreement.

This appears to be the most practical means of dissuading owners or their agents from attempting to circumvent the above recommendation by offering agreements of less than 12 months.

Recommendation 7

- Colony 47 supports, but with qualification, transferring provision for making an order about unreasonable rent increases from the courts to the Residential Commissioner.

Colony 47 accepts that transferring determinations of the reasonableness of a rent increase away from the courts will provide a more user-friendly process. However, for many people, even a 'modest fee' associated with making an application to the Residential Commissioner may be prohibitive. Colony 47 proposes that a fee *not* be applicable to applications made by lower-income tenants; for example, holders of a Centrelink Health Care Card. Any concern that the Commissioner would become inundated with spurious or otherwise unwarranted applications could be addressed by simply replacing 'market rent' with a more objective and reliable measure or test. A tenant (or tenant advice or support service) could then apply the measure or test themselves before deciding to proceed with an application.

It remains the contention of Colony 47 that 'market rent' is neither a reliable nor an objective tool for determining rent increase reasonableness. It has proven to be inadequate for stopping excessive rent increases and should be viewed as a constitutive element, rather than a symptom, of market instability. Therefore, we again call for exploration to be undertaken of the practicality and fairness of using the percentage change in the CPI over the given 12-month period to determine whether a rent increase is reasonable.

Nevertheless, Colony 47 accepts that the recommendations in this 'Final Report and consultation paper' represent 'progress up to this point in time'. Therefore, we are encouraged that a determination of rent reasonableness by the Residential Tenancy Commissioner would appear to allow for 'other relevant matters' to be included. We propose that in order to provide clarity and consistency to this process, and ensure other relevant matters are always considered, there be a requirement on the Commissioner to ensure that there is always both necessary and sufficient evidence of reasonableness. In other words, whilst having not exceeded 'market rent' might remain as necessary evidence of the reasonableness of a rent increase, it will not alone be sufficient evidence. It is the view of Colony 47 that this is a good way to achieve a degree of fairness, given 'market rent' can be so arbitrary, ultimately decided through a calculation of the average rent of similarly sized and located properties and thus,

easily skewed by the existence (or creation) of 'outliers' or properties with extremely high (or low) rents.

- Colony 47 supports, but with qualification, the requirement that an application for determining the unreasonableness of a rent increase be made no later than 60 days after notification of the increase.

As rent can only be increased 60 days after notice of the increase is given, this time frame seems the most practical. This amendment however should clearly state that notice of the increase must be given in writing.

Part 3 – Rent bidding

Recommendation 8

- Colony 47 supports the requirement that all rental properties be advertised or offered for rent at a fixed price.

However, given that this amendment could be 'read' as contrary to an amendment 'allowing for the level of rent for a property to be negotiated between the owner and the tenant at the beginning of a tenancy' (Recommendation 6), we wonder whether the legislative solution to the problem of rent bidding currently in use in Queensland might be more practicable. That is, that a rental bond or security deposit may only be taken if the rental property is advertised for rent at a fixed price.

Part 4 – Minimum standards of accommodation

Recommendation 9

- Colony 47 supports both part (a) and part (b).

Recommendation 10

- Colony 47 supports the termination of a tenancy agreement where the premises are subject to a closure order that forbids human occupation.

This amendment, however, should clearly state that it is a termination of the tenancy agreement without penalty.

Part 5 – Maintenance and repair obligations

Recommendation 11

- Colony 47 supports clarifying the meaning of ‘function’ in section 33 of the Act and accepts that appropriate wording will need to be developed on the basis of legal and parliamentary counsel advice.

Recommendation 12

- Colony 47 supports, with qualification, transferring jurisdiction to make orders under section 36A of the Act to the Residential Tenancy Commissioner.

Colony 47 accepts that transferring tenancy matters/disputes away from the courts will provide a more user-friendly process. However, for many people, even a ‘modest fee’ associated with making an application to the Residential Commissioner may be prohibitive. Colony 47 proposes that a fee *not* be applicable to applications made by lower-income tenants; for example, holders of a Centrelink Health Care Card.

Recommendation 13

- Colony 47 does not support removing provisions that allow tenants to undertake maintenance.

Specifically, Colony 47 does not agree that the provision that allows a tenant to organise for themselves an urgent and emergency repair is ‘rarely used’. Colony 47 also does not agree that when an owner is unable to be contacted, or simply refuses to be responsible for undertaking an urgent and emergency repair, it is reasonable to expect a tenant to then make an application to the Residential Tenancy Commissioner for an order for this repair to be carried out.

Recommendation 14

- Colony 47 supports clarifying that during a tenancy it is owners, rather than tenants, who are responsible for replacing tap washers; but replacing light globes, up to a certain height, is the tenant’s obligation.

Recommendation 15

- Colony 47 supports clarifying that the obligation to ‘repair’ also includes the obligation to ‘replace’ when the item is incapable of repair.

Part 6 – Encouraging water efficiency

Recommendation 16

- Colony 47 supports making an owner's right to recover water usage charges for the premises conditional on the installation of water efficient taps, shower heads and dual flush toilets.

The installation of water efficient devices in *all* residential premises is a common good. Thus, whilst owners could conceive that they would be disadvantaged by this change in the short-term, in the long-term they, like everyone else, benefit.

Moreover, not installing such devices, but nevertheless requiring tenants to commence paying for their water usage, could be conceived as a disadvantage to tenants; especially given that water costs have typically already been factored in to the rents being charged.

Part 7 – Miscellaneous amendments

Recommendation 17

- Colony 47 accepts that further consultation on a range of miscellaneous issues will remain part of the review process.