

Residential Tenancy Act Review

Final Report and Consultation Paper



December 2011



Consumer Affairs and Fair Trading

This document has been prepared by the Office of Consumer Affairs and Fair Trading on behalf of the Minister for Corrections and Consumer Protection the Hon Nick McKim MP.

The Office of Consumer Affairs and Fair Trading is a Division of the Department of Justice.

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Contents

Executive Summary	2
Part 1 – Certainty of tenure	7
Part 2 - Rent increases	12
Part 3 - Rent bidding	15
Part 4 - Minimum standards of accommodation	17
Part 5 - Maintenance and repair obligations.....	20
Part 6 – Encouraging water efficiency	25
Part 7 - Miscellaneous amendments	26
Recommendations	27

Executive Summary

Reform of residential tenancy law and the recommendations in this consultation paper

Most people in our community rent a home at some point in their lives. Many people rent for a short time while studying and go on to buy their own homes and rarely move back into the rental market. Other people, often the most vulnerable people in our community, are long-term tenants.

However, whatever the circumstances of individual tenants and the length of their tenure, a rental property is a person's home and people have a right to security of tenure, quiet enjoyment, reasonable standards of accommodation and to expect that repairs are completed in a timely manner. Conversely, people own rental properties as an investment and also have a right to a reasonable return on that investment and to have confidence that the property will be returned in a reasonable condition at the end of a tenancy.

Residential tenancy law is a balance between the expectations of tenants and property owners. These expectations reflect the prevailing values of the community and these values change over time. This in turn requires residential tenancy law to be renewed to ensure it reflects these values in a balanced way and protects the interests of both tenants and owners. This review focuses on the extent to which the current legislative regime reflects contemporary community values.

Also, as has been noted by commentators on tenancy law, where one state or territory makes changes to the law other jurisdictions tend to follow. For this reason, a significant factor in developing the recommendations in this paper has been changes that have occurred elsewhere in Australia and whether the law in Tasmania is consistent with those changes. However, this does not mean that there cannot be innovation and that Government is restricted only to following other states and territories.

This paper contains a series of recommendations for change to tenancy law in Tasmania. These recommendations address a range of issues identified by key industry, tenant and community stakeholders and will deliver better outcomes for tenants and property owners. These recommendations address a range of issues including certainty of tenure, rent increases, rent bidding, standards of rental accommodation, dispute resolution, maintenance and repairs and water efficiency.

These proposals have been developed in consultation with key industry and community stakeholders. This does not mean that everyone will agree with the

Residential Tenancy Act Review – Final Report

recommendations and there will always be debate about residential tenancy law. However, there has been a significant degree of consensus about the major issues and in particular about better dispute resolution processes and the establishment of minimum standards.

This review has been completed as a number of steps rather than one single package and these steps are detailed below. As many of the issues are complex, it is more practical to progress some matters separately rather than delay the whole package. For this reason tenancy databases and mandatory smoke alarms have been progressed separately and minimum standards will be dealt with in two stages. Also, it is important to note that this paper does not make recommendations about all of the issues raised by respondents to the review. This paper represents the key issues that have been considered and represents progress up to this point in time. This does not mean that other issues will not be addressed and further discussions will take place with the respondents in relation to these issues.

The purpose of this paper is to invite comments on the recommendations. These comments will help to refine the proposals that will be submitted to Cabinet in early 2012. Once a draft Bill has been developed, there will be further consultation on the detail of the proposals. The contribution of all stakeholders has been of much assistance to the process so far and further contributions over the remaining stages of the review are important.

Review of the Act – the reform process

Discussion Paper

In November 2009, the former Minister for Corrections and Consumer Protection, the Hon Lisa Singh, released a discussion paper titled, 'The Residential Tenancy Act 1997 and current issues in the residential tenancy market'. The release of the discussion paper marked the beginning of this review and interested parties were invited to make comments on the issues raised in that paper.

Rental Deposit Authority

On 1 July 2009, the Rental Deposit Authority commenced and assumed responsibility for collecting and disbursing bonds. While there were initially some issues concerning the time taken to process bonds and determine disputes, these processes have improved as the organisation matures and the Office continues to refine procedures.

Residential Tenancy Conference

In November 2010, the current Minister for Corrections and Consumer Protection, the Hon Nick McKim MP, opened a conference titled, 'Renting in Tasmania 2010-

Residential Tenancy Act Review – Final Report

2020: The next decade'. Two of the key note speakers at this conference were Judy Yates and Peter Sutherland who addressed participants on market trends and the history of tenancy law reform in Australia. The conference was also addressed by tenancy officers from New South Wales, the Australian Capital Territory, Victoria and South Australia who shared their respective experiences in reviewing residential tenancy law in those jurisdictions.

The conference was the first event of this type to have been held in Tasmania to specifically discuss issues in the residential tenancy market. It was an important event because it allowed people with different experiences to discuss the contemporary issues and to explore concerns that had been raised in submissions.

It also provided an opportunity for consumer and industry groups to meet and share their respective views. The conference included workshops which enabled consumer and industry groups to identify common ground and explore policy responses to residential tenancy issues. The workshops resulted in the development of consensus about a number of key issues and approaches.

At the conference the Minister gave commitments to progress the following key reforms:

- the mandatory installation of smoke alarms;
- the expansion of the role of the Residential Tenancy Commissioner under the Residential Tenancy Act;
- the regulation of residential tenancy databases; and
- the development of minimum standards of accommodation.

Progress of the review so far

At the conference, the Minister also outlined the process for progressing the review of the Act and advised that he would establish a Reference Group to assist the Office of Consumer Affairs and Fair Trading in the development of recommendations for reform. This Reference Group was convened by the Minister in May 2011.

In November 2010, the Parliament agreed to series of amendment to the Residential Tenancy Act. The *Residential Tenancy Amendment Act 2010* restricts master tenancy arrangements which had previously allowed owners to avoid the application of the Act. The Act also established the role of residential manager which will assist in the development of the National Rental Affordability Scheme.

Residential Tenancy Act Review – Final Report

In August 2011, Cabinet agreed to the development of legislation to mandate the installation of smoke alarms in residential rental properties in Tasmania. A Bill is currently being drafted for consultation with stakeholders and will be introduced into Parliament in 2012.

In September 2011, the Parliament agreed to further amendment of the Residential Tenancy Act. The *Residential Tenancy Amendment Act 2011*, which will commence shortly, adopted a national model for the regulation of residential tenancy databases. The Bill also applies the Act to all pre-2009 bonds and requires that these are now to be deposited with the Rental Deposit Authority. The Bill also makes further adjustments to the law relating to sub-tenancies and creates clearer rules around assignment of tenancies where tenants vacate before the expiry and transfer the agreement to a new party.

This consultation paper

This consultation paper is the final stage of the review process. The recommendations contained in the paper have been developed as a result of submissions made in response to the earlier discussion paper, the ideas expressed at the conference and discussions with stakeholders.

The proposals in this paper have been discussed with the Reference Group and their input into the process has been invaluable. However, while the ideas and recommendations are based on the input of Reference Group members, they are not endorsed by that Group. Views among stakeholders vary and residential tenancy policy will always be contested. Nevertheless, it is worth noting that, there is considerable common ground between stakeholder views about the broad policy directions. Most of the debate is about the specific detail.

What are we asking from people in this process?

The Minister for Corrections and Consumer Protection, the Hon Nick McKim MP is inviting written submissions on the recommendations contained in this paper. Submissions should be addressed to the 'Residential Tenancy Review' and can be sent:

By email to consumer.affairs@justice.tas.gov.au

By post to:

Residential Tenancy Review

GPO Box 1244

Hobart 7001

Residential Tenancy Act Review – Final Report

If you would like to meet with the project manager to discuss your submission please contact the Office of Consumer Affairs and Fair Trading on (03) 6233 4555.

The closing date for submissions is 24 February 2012.

Final process of the review

Responses to this paper will be considered in the development of final recommendations to the Minister for Corrections and Consumer Protection. Once these proposals have been considered by Government, legislation will be drafted to implement the recommendations and following consultation on the Bill will be introduced into Parliament in 2012.

Part I – Certainty of tenure

Recommendation I

- Extend the minimum notice period that applies at the end of a fixed-term agreement from 14 days to 42 days; and
- Allow notice to be given up to 60 days before the expiry of the agreement.

Context

Where an owner requires vacant possession on the expiry of a fixed-term agreement, the Act currently requires the provision of at least 14 days' notice. This notice can be given up to 28 days before the expiry of an agreement but does not take effect until after the date of expiry.

A fixed term agreement converts to an agreement of no fixed term 28 days after the expiry of the agreement. In the period between the expiry of the fixed term agreement and 28 days after the expiry, the owner can give 14 days' notice to terminate the agreement.

Discussion

Where a tenant wishes to extend the terms of an agreement, the tenant is often unable to obtain a commitment from the owner as to whether a new rental period is available. Under current law, a tenant may become aware that the agreement will not be extended only when 14 days' notice is given.

There is general agreement among stakeholders that 14 days is not an adequate notice period to enable tenants to secure alternate accommodation. Extending this notice period will provide a more realistic timeframe for tenants to secure alternate accommodation.

Extending the notice period is supported by industry, tenant and community groups. However, there are varying views as to what period of time is appropriate. The proposed 42 days' notice represents a compromise between stakeholder views but is less than the current notice periods required in other jurisdictions.

It is proposed that notice is able to be given up to 60 days before the expiry of the lease but would not take effect until the day of expiry. Where notice is given less

Residential Tenancy Act Review – Final Report

than 42 days before the expiry date, the notice would take effect 42 days after notice is given, which would be after the expiry date.

The new requirement would only apply to fixed-term agreements. It would not affect the notice periods that apply to termination of an agreement of no fixed term.

There arises an issue as to what period of notice an owner should be required to give to end a fixed term residential tenancy agreements if the term of the agreement is less than 12 months. There is a sound argument that different notice periods for different lengths of agreement would be confusing. For this reason it is proposed that a 42 days notice period apply to all agreements but that where the length of the agreement is less than 42 days, the period of notice should be the same as the length of the agreement.

Recommendation 2

- Provide that fixed term agreements automatically convert to an agreement of no fixed term on the expiry of the agreement.

Context

The Act currently allows owners to serve a notice to vacate up to 28 days after a fixed term agreement expires. At the end of this 28 day buffer period, the agreement automatically becomes an agreement of no fixed-term and cannot be terminated by the owner unless the property is to be sold, renovated or used for another purpose.

This buffer period was included in the Act so that owners who wished to manage tenancies on a fixed term basis would not have their agreements automatically convert to non-fixed term agreements at the end of the fixed term period.

Although the provision of a buffer period had a logical basis, there is general agreement that this buffer period contributes to the confusion and uncertainty that surrounds end of tenancy arrangements. Consequently, there is general agreement that this 28 day period should be removed so that fixed term agreements automatically convert to non-fixed term agreements on the expiry of the fixed term. An owner can either renew an agreement for a further period or give notice to terminate an agreement in line with recommendation 1.

Recommendation 3

- Require tenants to give at least 14 days' notice of their intention to vacate at the end of a fixed-term agreement.

Context

Currently, tenants are not required to give notice before vacating premises if they leave on the day the agreement expires. If the tenant remains in occupancy on the day after the expiry of the agreement, they must give 14 days notice prior to vacating.

Discussion

Under the current arrangement, an owner may be unable to obtain a commitment from a tenant as to whether the tenant intends to renew an agreement or leave on the day of expiry. Where a tenant simply leaves on the day of expiry, the owner is likely to lose rental income until a new tenant can be found.

This proposal to require tenants to give notice at the end of a fixed term will give greater certainty to owners. As the previous recommendations are intended to give certainty to tenants, it is reasonable that some security is given to owners around end of agreement arrangements.

This proposal is supported by industry, tenant and community groups.

Recommendation 4

- Extend the minimum notice period from 28 days to 60 days where vacant possession is required due to foreclosure or mortgagee sale.

Context

A tenant can be given notice to vacate where an order for foreclosure has been made under the *Land Titles Act 1980* or a mortgagee sale is to occur in accordance with that Act. These provisions apply to both fixed and non-fixed term leases.

Where a notice to vacate is served for these reasons, the tenant must be given at least 28 days' notice.

Residential Tenancy Act Review – Final Report

Discussion

These provisions enable a mortgagee, normally a financial institution, to sell mortgaged property. Mortgagee sales occur where the property owner defaults and the default is unlikely to be remedied except through the sale of the property.

It is proposed to extend the 28 day notice period as foreclosure or mortgagee sale occurs through no fault of the tenant and may occur during the period of a fixed-term tenancy. This undermines security of tenure and many tenants have difficulty securing alternate accommodation in the 28 day period. For these reasons, a longer notice period is considered appropriate.

Financial institutions have a legitimate interest in securing their asset and the sale of the property is usually required to finalise the property owner's obligations. However, in other jurisdictions the notice period for this arrangement is 60 days and this proposal extends the Tasmanian notice period in line with the approach adopted elsewhere.

The proposal is supported by the real estate industry, tenant and community groups.

Recommendation 5

- Clarify the meaning of 'renovated' and 'another purpose' in section 42(1)(c) of the Act;
- Allow termination to let properties to family members after 90 days' notice; and
- Require evidence of an agency agreement before giving notice on the grounds of sale.

Context

Section 42(1)(c) of the Act allows an owner to serve a notice requiring vacant possession where the agreement is not for a fixed-term and the premises are to be sold, renovated or used for another purpose. However, the meaning of these terms is not defined.

Discussion

As the meaning of the term 'renovate' is not defined in the Act there is uncertainty about the level of renovation that is required before notice can be given on this

Residential Tenancy Act Review – Final Report

ground. Some people have argued that renovation needs to be substantial while some property owners have given notice because of minor repairs or modest maintenance. In some cases, owners have simply used this provision as an excuse to get rid of a tenant, notwithstanding that the tenant has not breached the residential tenancy agreement.

A clear definition of ‘renovation’ should be provided for the purposes of this section so that the grounds for giving notice are clear. For example, a definition may provide that renovations are substantial, are likely to exceed a certain period of time to complete, or cannot reasonably occur while the tenants remain in occupancy.

Similarly, a number of owners have given notice on the grounds that the property is to be used for another purpose, where the other purpose is to let the property to family members. This was not the intention of this provision, as other purpose was intended to mean a purpose other than as a residential dwelling.

Nevertheless, other jurisdictions make provision for tenancies to be terminated where an owner wishes to let the premises to family and it may be appropriate to allow this to occur in Tasmania. For this reason, it is proposed that some clarity is given to the meaning of ‘another purpose’. It is suggested that owners be allowed to give notice where they intend to let premises to family members. However it is recommended that the notice period in these circumstances is 90 days.

A further issue arises where properties are to be sold. Some owners have simply advised tenants to vacate on this ground as a means of getting rid of the tenant, despite having no intention to sell. In some jurisdictions, the owner must have an agreement to sell the property with a real estate agent or provide other evidence of an intention to sell, before being able to give notice under this section. This appears to a reasonable requirement and should be adopted as part of the requirements of this section.

Part 2 - Rent increases

Recommendation 6

- Allow for the level of rent for a property to be negotiated between the owner and the tenant at the beginning of a tenancy;
- Limit rent increases during a tenancy to once in every 12 months; and
- Allow for a review of the reasonableness of increases in rent on the renewal or extension of an agreement.

Context

There is no restriction on the level of rent that can be agreed between the owner and the tenant at the beginning of a tenancy. However, section 20 of the Act allows for rent increases to occur at six monthly intervals, provided that there is a written tenancy agreement in place that allows for an increase to be imposed. Rent can also be increased where there is no written agreement.

Rent increases can be reviewed under section 23 of the Act to determine whether the increase is reasonable. However, tenants rarely make claims under this section. This appears to be because of cost and a reluctance to use the courts to seek redress in these cases.

Discussion

Tenant and community groups have long argued for improved provisions around rent setting and have proposed that rent increases should only be allowed once in a 12 month period.

It has also been argued that six monthly increases encourage some owners to automatically 'ratchet up' prices at regular intervals with little justification. Increases at six monthly intervals often result in mid-term increases and many tenants struggle to meet these increased costs. Rent increases during the term of the agreement can push tenants from 'housing stress' into 'housing crisis' during the term of the lease.

Most tenancy agreements are for a period of 12 months. Limiting rent increases to the same period would align rent increases with the duration of most tenancies. This would still allow rents to be negotiated at the beginning of a lease and would

Residential Tenancy Act Review – Final Report

not adversely impact on the ability of the market to determine price according to demand and supply.

Limiting rent increases to once in a 12 month period would give tenants greater certainty and security, particularly those most vulnerable to rent increases. At the same time, it still allows owners to periodically increase rents in line with market changes.

There is concern that some owners might circumvent a 12 month limitation by entering into agreements of shorter duration and increasing the rent on renewal or extension. A solution to this issue would be to treat the extension or renewal of an agreement as part of an ongoing agreement. This would mean that if a 6 month agreement is renewed, rent could not be increased until 12 months had elapsed from the time that an agreement was first entered into.

A reasonableness test would apply to any rental increase during the total period of the occupancy. This would involve applying the current test in section 23 of the Act which considers the general level of rents for comparable properties in the area or a similar area, along with any other relevant factors.

Recommendation 7

- **Transfer the current provision for making an order about unreasonable rent increases from the courts to the Residential Tenancy Commissioner; and**
- **Require applications to be made within 60 days after the increase is notified.**

Context

Section 23 of the Act provides that a tenant can apply to the court for an order declaring that a rent increase is unreasonable. In determining whether an increase is unreasonable, the court is to have regard to the general level of rents for comparable premises in the locality or a similar locality and any other relevant matters.

Discussion

Under this proposal tenants would be able to apply to the Residential Tenancy Commissioner for an order declaring that a rent increase is unreasonable. A modest fee may be payable on application.

Residential Tenancy Act Review – Final Report

Court processes can be expensive and time consuming for tenants and may also be difficult to understand. Currently, an application for the court to determine whether a rent increase is unreasonable must be accompanied by a \$49.00 fee. In many instances, this fee exceeds the fortnightly value of a rent increase. Further, under the current process, tenants must provide evidence that the rent increase is unreasonable and this assessment can only practically be made on the basis of a professional valuation which might cost hundreds of dollars.

There is agreement among stakeholders that current court processes are a significant barrier for tenants who wish to challenge a rent increase on the basis that it is unreasonable.

Rather than require tenants to prove that a rent increase is unreasonable, this question could be determined upon application to the Residential Tenancy Commissioner. It is possible for the Commissioner to make an assessment for this purpose at low cost and without undertaking a formal valuation of a property. The process could also be targeted so that only those applications where the rental increase is greater than a certain value would be examined. The threshold for determining an increase might be set at a certain percentage above market rent.

Where an increase exceeds the relevant threshold amount, the Commissioner would consider the reasonableness of the increase for a particular property. As previously mentioned, this would involve applying the current test in section 23 of the Act which considers the general level of rents for comparable properties in the area or a similar area, along with any other relevant factors.

This proposal is supported in principle by the real estate industry, tenant and community groups.

There is currently no time limit for applying for an order under section 23 of the Act declaring that a rent increase is unreasonable. It is proposed that application for review of the increase must be made within 60 days after notice is given of the proposed increase.

Part 3 - Rent bidding

Recommendation 8

- Require that all rental properties be advertised or offered for rent at a fixed price.

Context:

There are two forms of rent bidding. The first is an active auction process where parties are invited to make offers for the amount they are prepared to pay for a property. This activity is uncommon but is practised by some real estate agents. The second and more common practice is rent bracketing where the rental is advertised as being within a certain range, for example, \$300.00 to \$400.00. Prospective tenants are invited to make an offer within this range. In addition to these two forms of rent bidding, tenants may also offer a higher than advertised rent to secure a property where supply is short.

While there is general agreement that rents should be determined by the market, there is a reasonable expectation by tenants that a property will be available at the advertised price.

Rent bidding is a particular problem for low income tenants as it often results in properties that initially appear affordable becoming unaffordable. This adds to the difficulties they already face in securing affordable housing. Where the practice occurs, it can also result in significant wasted time and effort inspecting and applying for properties.

There is currently no legislative prohibition on rent bidding or rent bracketing in Tasmania.

Discussion

There are a small number of real estate agents who practice rent bidding. Rent bidding is not supported by the real estate industry and for this reason, it is considered appropriate to prohibit this activity. Rent levels can readily be determined according to market forces and for the reasons outlined, rent bidding is not considered an acceptable practice.

Similarly, rent bracketing is not necessary to set prices in the market. It would assist tenants in their searches for housing if clearer information was available about the cost of rental properties.

Residential Tenancy Act Review – Final Report

This issue has arisen in other jurisdictions and the most effective approach is simply to require that all rental properties are advertised at a stated fixed price. At the beginning of a tenancy, an owner would continue to be free to ask whatever price they choose, as long as any advertisement for the property stated that fixed price. This would not prevent a tenant from offering a higher price or prevent an owner from accepting that price. However, it would be illegal for an owner to invite offers above the advertised price.

Part 4 - Minimum standards of accommodation

Recommendation 9

(a) Require owners to:

- Ensure that the premises are reasonably clean at the start of a tenancy; and
- Provide and maintain the premises in good repair throughout the period of the tenancy; and
- Ensure that the premises have:
 - hot and cold running water;
 - toilet facilities;
 - a bath or shower; and
 - cooking facilities; and
- Ensure that premises are:
 - free of roof leakages;
 - free of substantial drafts; and
 - adequately ventilated; and
- Ensure that premises contain adequate heating in the main living area.

(b) Establish a working party to develop comprehensive minimum standards.

Context

There is currently no minimum standard that specifies the condition a rental property must be in at the start of a tenancy. The only obligation imposed by the Act is that the owner must maintain the property as nearly as possible in the same condition, apart from reasonable wear and tear, that existed when the agreement commenced.

Section 53 of the Act provides that the tenant is to keep the premises in a reasonable state of cleanliness, having regard to the condition of the property at the

Residential Tenancy Act Review – Final Report

start of the tenancy. However, there is no obligation on the owner to ensure that the premises are in a clean condition at the start of a tenancy.

Discussion

The absence of minimum standards means that there is currently limited capacity to prevent the leasing of substandard properties. Where properties are sub-standard, the only redress is for the property to be declared unfit for human occupation under the *Public Health Act 1997*. Orders may also be made under this Act for demolition.

This is a problem for low income tenants and their families. In a tight rental market, many of these tenants have little choice but to accept properties that are unclean or in poor repair. Once accepted, there is little recourse under current legislation to improve the general condition of these premises.

There is agreement among stakeholders that there should be clear minimum standards for the condition of rental properties.

Other states and territories require that a property must be in reasonable or good repair and maintained to the same standard throughout the period of a tenancy. Most jurisdictions also require that premises be provided in clean condition at the start of the tenancy.

A requirement that the owners provide and maintain the property in good repair throughout the period of a tenancy establishes a clearer obligation for owners regarding the ongoing condition of a property. However, what constitutes good repair is subject to debate and may vary between different property types. It may also depend on the age, character and prospective life of the premises. These factors will need to be taken into consideration in assessing compliance with the requirement.

The establishment of comprehensive minimum standards is a complex matter that will require extensive consultation with stakeholders and may require the development of technical specifications. It would also require consultation with a number of areas across government. Consequently, this is not a matter that can reasonably be finalised within the period of this review and to try and do so would delay the consideration of other matters.

Nevertheless, there is a need for immediate action to deliver basic standards to ensure that tenants are provided with at least the most basic elements of habitability. These include hot and cold running water, toilet facilities, a bath or shower, and a cooking facility. Premises should also have an adequate facility for heating located in at least the main living area of the house and the roof should be free from leaks. The premises should also be free from substantial drafts and the premises should be adequately ventilated.

It is recommended that minimum standards of accommodation are implemented in two phases. The first phase is that the Act be amended to require an owner to ensure cleanliness at the start of the tenancy. The Act should also be amended so that there is a clear obligation to maintain the premises in good repair during the term of the agreement.

As there will be some debate about what is meant by ‘good repair’, it may be useful to allow for the development of guidelines to give clarity to the meaning of this term. These will assist the Residential Tenancy Commissioner in issuing orders, as proposed under recommendation 7. Phase I should also adopt the standards detailed in recommendation 9 (a) above.

Phase two will explore more sophisticated amendments that define minimum standards for rental properties in consultation with relevant stakeholders and experts. These will be developed during 2012.

Recommendation 10

- Provide that a residential tenancy agreement is terminated where the premises are subject to a closure order that forbids human occupation under section 87 of the *Public Health Act 1997*.

Context

Section 87 of the *Public Health Act 1997* allows a council to issue a closure order forbidding human occupation or habitation where premises are so unhealthy that it is unsafe for a person to occupy them. Where this occurs, section 90 of the *Public Health Act* prohibits the letting of those premises for human occupation.

However, there is currently no link between the issue of an order and termination of the agreement under the Residential Tenancy Act. While the issuing of a closure order would frustrate the agreement there is currently no formal mechanism under the Residential Tenancy Act to terminate the lease in these circumstances.

Discussion

This recommendation resolves any uncertainty by terminating the agreement where the premises are subject to a closure order that forbids human occupation.

Part 5 - Maintenance and repair obligations

Recommendation 11

- Clarify the meaning of ‘function’ in section 33 of the Act to make clear the owner’s obligation for the maintenance of essential services.

Context

Section 33 of the Act provides for the carrying out of urgent repairs where an essential service ceases to function. However, the phrase ‘ceases to function’ is not defined.

There is some uncertainty about the meaning of this term and it would assist all parties to clarify its meaning. For example it has been argued that where only one hot plate on a stove top works, the stove is still functional and does not require urgent repair.

Discussion

The reason for including the urgent repair provisions in section 33 of the Act is to ensure that essential services are repaired and restored promptly, as these are integral to living in the premises and fundamental to the purpose of tenancy. While the need for some repairs might be an inconvenience, a tenancy is not viable without water, sewerage, electricity or cooking facilities.

While the definition of essential services refers to cooking stoves installed within the premises, it is unclear whether a cooking stove ceases to function if one hotplate (or three) has ceased to work. Similarly, it is unclear whether a cooking stove ceases to function if the grill ceases to work yet the oven and all of the hotplates still work.

Similarly, if only the heating element of a reverse cycle heat pump failed and the cooling function still worked, would this require an urgent repair? If the problem does not constitute an urgent repair, then the owner would still be obliged to repair the item as a general repair under section 32 but within a 28 day timeframe. For this reason it is important that there is greater clarity about the meaning of the section 33 requirement.

While respondents made a number of suggestions, appropriate wording will be developed on the basis of legal and parliamentary counsel advice to provide a definition that achieves greater clarity.

Recommendation 12

- **Transfer jurisdiction to make orders under section 36A of the Act to the Residential Tenancy Commissioner.**

Context

Section 36A of the Act allows the court to make an order that an owner carry out reasonable repairs.

Discussion

Maintenance or repair issues do not usually involve large amounts of money and tenants are often unwilling to make application to a court, particularly if they are unsure about the outcome. The cost and the time taken for a matter to be resolved in a court are significant disincentives for a tenant to enforce the owner's maintenance or repair obligations.

As determining maintenance obligations and making relevant orders are relatively uncomplicated matters, these could readily be determined by the Residential Tenancy Commissioner. This would provide for more affordable, accessible and timely resolution to maintenance problems.

A similar approach is adopted in other jurisdictions where officers are available to inspect properties and make relevant orders.

This proposal is supported by the real estate industry, tenant and community groups.

Recommendation 13

- **Remove provisions that allow tenants to undertake maintenance.**

Context

Sections 32 to 36 outline the maintenance and repair obligations under the Act. In certain circumstances a tenant is able to undertake repairs. This arises where urgent and emergency repairs are required and the owner cannot be contacted or has failed to carry out repairs.

Residential Tenancy Act Review – Final Report

Discussion

Tenants are reluctant to carry out repairs under these sections because they must be done at the tenant's cost. The tenant can seek reimbursement for the cost of repairs from the owner but tenants are often reluctant to undertake this maintenance because of a risk that they will not be reimbursed.

It has been suggested that these provisions allow an owner to avoid their responsibility for undertaking urgent and emergency repairs. As the provisions are rarely used, it has been suggested that they should be removed. A tenant could obtain an urgent order from the Commissioner in the event of an urgent or emergency repair under the changes proposed in recommendation 12.

The provision for an owner to give details of a nominated repairer should be retained and this repairer should be able to be instructed to undertake work by the tenant, as is the case under the current arrangements.

Recommendation 14

- Clarify that owners are responsible for replacing tap washers during a tenancy; and
- Clarify the tenant's obligation to replace light globes.

Context

There is some doubt as to whose responsibility it is to replace tap washers and light globes during a tenancy. Most tenancy agreements provide that tenants are responsible for replacing both tap washers and light globes during the period of a tenancy.

Discussion

There is a general presumption by stakeholders that the obligation for replacing tap washers and light globes rests with the tenant. This was certainly the agreement at a working party level in the lead up to the drafting of the Residential Tenancy Bill in 1997. However, apart from explicitly excluding light globes and tap washers from the definition of essential services, there is no explicit mention of these items in the Act. Consequently, it could be argued that these items were covered by the owner's general obligation to undertake repair and that on this basis they are the responsibility of the owner.

As these matters can be a source of tension between the parties, there is value in establishing clear rules about tap washers and light globes. There is general agreement amongst stakeholders that it is a reasonable proposition that tap washers should be the responsibility of the owner and light globes should be the responsibility of the tenant.

The rationale for the proposition that owners should replace tap washers is that many tenants do not have the technical expertise to change tap washers. Further, washers are an integral part of the water system and their life is not generally connected with usage by the tenant. On the other hand, the life of light globes is dependent on tenant usage and most tenants are capable of changing a light bulb.

Where globes are missing or not working at the start of a tenancy, this is usually remedied by the owner or noted on the condition report. The standard form Real Estate Institute of Tasmania tenancy agreement provides that, unless noted on the condition report, it is agreed that all light globes were present and working at the start of the tenancy and that it is the tenant's responsibility to periodically replace them.

Some complications do arise where globes are of a specialist nature, such as heat globes, or where light globes are located above a certain height. It is reasonable to provide that specialist lights are the responsibility of the tenant while it would be a reasonable compromise to provide that lights which are situated above a specified height should be the responsibility of the owner.

Recommendation 15

- Clarify the obligation to 'repair' in Part 3, Division 4 of the Act to ensure that it also includes the obligation to 'replace'.

Context

Part 3, Division 4 of the Act sets out the maintenance and repair obligations of property owners. These include the obligation to maintain the premises and carry out any necessary 'repairs' that do not arise from the fault of the tenant. However, it is unclear whether the obligation to 'repair' includes the obligation to 'replace' an item that fails during a tenancy.

Residential Tenancy Act Review – Final Report

Discussion

To ensure that items provided with the premises that subsequently fail are replaced, it is necessary to clarify that the obligation to repair includes the obligation to replace. In some cases where an item has failed to operate, such as a heater, the owner has argued that the heater is incapable of being repaired as replacement parts are no longer available. In this case, there should clearly be an obligation to replace the heater.

Providing a clear obligation for an owner to replace items that are incapable of repair will clarify maintenance and repair obligations and enable the Commissioner to make appropriate orders.

Part 6 – Encouraging water efficiency

Recommendation 16

- Make 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.

Context

Currently, section 17(3)(b) of the Act allows an owner to recover water usage charges from a tenant where the tenant's usage can be calculated using a water meter. At present, not all properties have water meters installed. However, under the government's universal two-part pricing scheme, it is intended that all properties will have meters installed by 1 July 2012.

Discussion

Once implemented, the roll-out of water meters across the state means that most rental property owners will be able to recover water usage charges from their tenants. The only exception will be owners of strata title properties where sub-meters have not been installed. Owners of these properties will be unable to determine the tenant's individual usage and therefore unable to recover water usage charges from the tenant.

Two-part pricing is intended to send a price signal to water users in an effort to encourage them to reduce their water consumption.

In the rental context, two-part pricing means that tenants will ultimately bear the costs of water usage. However, while tenants can reduce their water consumption to some extent by behavioural change, one of the most effective ways of reducing consumption is to install water efficient devices in the premises. The sorts of devices that can be installed include water efficient shower heads, taps and dual flush toilets. These are relatively inexpensive and can reduce consumption significantly.

Part 7 - Miscellaneous amendments

Recommendation 17

- Consult further on a range of miscellaneous issues.

Discussion

While there has been extensive consultation on a wide range of issues, further discussion needs to take place about a number of miscellaneous matters. These include the application of the Residential Tenancy Act to caravans and mobile homes, and the continuing exemptions for student and emergency accommodation. Many of these exemptions were provided for policy reasons that may no longer be valid and need to be reviewed.

While these issues deserve further consideration, it is also important that their consideration does not delay the implementation of the recommendations detailed in this paper. For this reason, it appears to be preferable that this consultation paper is released, notwithstanding that further work needs to be done in several areas. Those further issues will be explored at the same time as work progresses on the development of minimum standards for rental accommodation.

Similarly, there has been progress, as part of this review, on the development of standard form residential tenancy agreements and standard form condition reports. These will require further development and consultation. However, consideration of the recommendations contained in this paper should not be delayed because of progress on these matters.

Recommendations

Recommendation 1	7
• Extend the minimum notice period that applies at the end of a fixed-term agreement from 14 days to 42 days; and	7
• Allow notice to be given up to 60 days before the expiry of the agreement.	7
Recommendation 2	8
• Provide that fixed term agreements automatically convert to an agreement of no fixed term on the expiry of the agreement.	8
Recommendation 3	9
• Require tenants to give at least 14 days’ notice of their intention to vacate at the end of a fixed-term agreement.	9
Recommendation 4	9
• Extend the minimum notice period from 28 days to 60 days where vacant possession is required due to foreclosure or mortgagee sale.	9
Recommendation 5	10
• Clarify the meaning of ‘renovated’ and ‘another purpose’ in section 42(1)(c) of the Act;.....	10
• Allow termination to let properties to family members after 90 days’ notice; and	10
• Require evidence of an agency agreement before giving notice on the grounds of sale.	10
Recommendation 6	12
• Allow for the level of rent for a property to be negotiated between the owner and the tenant at the beginning of a tenancy;.....	12
• Limit rent increases during a tenancy to once in every 12 months; and	12
• Allow for a review of the reasonableness of increases in rent on the renewal or extension of an agreement.....	12
Recommendation 7	13
• Transfer the current provision for making an order about unreasonable rent increases from the courts to the Residential Tenancy Commissioner; and.....	13
• Require applications to be made within 60 days after the increase is notified.	13
Recommendation 8	15
• Require that all rental properties be advertised or offered for rent at a fixed price.	15
Recommendation 9	17
(a) Require owners to:	17
• Ensure that the premises are reasonably clean at the start of a tenancy; and.....	17
• Provide and maintain the premises in good repair throughout the period of the tenancy; and	17
• Ensure that the premises have:.....	17
○ hot and cold running water;	17

Residential Tenancy Act Review – Final Report

- toilet facilities;..... 17
- a bath or shower; and 17
- cooking facilities; and 17
- Ensure that premises are:..... 17
- free of roof leakages; 17
- free of substantial drafts; and 17
- adequately ventilated; and 17
- Ensure that premises contain adequate heating in the main living area..... 17
- (b) Establish a working party to develop comprehensive minimum standards..... 17**
- Recommendation 10..... 19**
- Provide that a residential tenancy agreement is terminated where the premises are subject to a closure order that forbids human occupation under section 87 of the *Public Health Act 1997*..... 19
- Recommendation 11..... 20**
- Clarify the meaning of ‘function’ in section 33 of the Act to make clear the owner’s obligation for the maintenance of essential services. 20
- Recommendation 12..... 21**
- Transfer jurisdiction to make orders under section 36A of the Act to the Residential Tenancy Commissioner..... 21
- Recommendation 13..... 21**
- Remove provisions that allow tenants to undertake maintenance..... 21
- Recommendation 14..... 22**
- Clarify that owners are responsible for replacing tap washers during a tenancy; and..... 22
- Clarify the tenant’s obligation to replace light globes. 22
- Recommendation 15..... 23**
- Clarify the obligation to ‘repair’ in Part 3, Division 4 of the Act to ensure that it also includes the obligation to ‘replace’..... 23
- Recommendation 16..... 25**
- Make 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. 25
- Recommendation 17..... 26**
- Consult further on a range of miscellaneous issues. 26