



**Tenancy in
tenants'
hands**

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For advice on
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call the

Tenants' Advice
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Mon - Fri 9:30am
- 1pm
&

Tues 4.30—8pm



Leasing Team
Development Services Branch
ACT Planning and Land Authority
GPO Box 1908
Canberra ACT 2601

Re: Unit Title Amendment Bill 2008

Thank you for the opportunity to provide comments on the *Unit Title Amendment Bill 2008*.

The Tenants' Union provided comments on the review of the Unit Titles Act 2001 in December 2006 and welcomes the Bill. We remain keen to participate in this process.

On the whole we welcome the inclusion of processes for the resolution of disputes between parties including tenants as occupiers of units, as well as the identification of other consumer protection issues. The submission attached highlights issues we have identified as of importance.

I am happy to discuss these issues further and would like to express the Tenants' Union's ongoing commitment to participation in any ongoing consultation process in relation to the protection of the rights of tenants' in the ACT as members of the ACT community affected by planning and associated issues.

Yours sincerely

Deborah Pippen
Executive Officer

13 June 2008

Submission by Tenants' Union (ACT)

1. Introduction

- 1.1. The Tenants' Union ACT (TU) is one of the primary providers of information, advice and education to tenants in the ACT.
- 1.2. The Tenants' Union membership consists of private, public and community housing tenants, occupants of other forms of accommodation as well as individuals interested in tenancy issues. The TU represents people renting in the ACT (private, public, community), works to promote the rights and interests of tenants and undertakes housing and tenancy-related projects.
- 1.3. The TU is a community legal centre providing tenancy advice, information and referral through the paralegal Tenants' Advice Service (TAS), casework is referred to Welfare Rights and Legal Centre. The TAS provides information, advice and referral through its advice workers and also undertakes community legal education, producing information, conducting workshops and presentations, promoting tenant participation. The TAS is funded through the Department of Justice and Community Safety, by a proportion of the interest earned from bonds lodged with the Office of Rental Bonds.
- 1.4. In the last year (06/07) our service reported 3,175 phone contacts with ACT tenants on tenancy/housing issues (36,966 over TAS operation since 1994). In addition to this we had direct contact with people renting through a variety of other forums including presentations, workshops, information stalls, and community meetings. Furthermore we participate in a range of networks and forums with community service workers and providers who have contact with people renting.
- 1.5. The consequence of this experience and range of services, and close links with related organisations, is extensive knowledge of tenancy and housing issues in the ACT. Accordingly the TU is providing a submission responding to issues and items identified as being of particular relevance to tenants in the ACT, and therefore the organisation.
- 1.6. In December 2006 the TU raised issues of concern through the consultation process at that time. The Unit Titles Amendment Bill 2008 does address many of the concerns we raised through the earlier process, and the TU is very pleased to support many of the changes. We have identified some issues below that we believe are of importance.

2. Comments

2.1. 51B Owners corporation – entry to units

The TU supports the inclusion of consent of the occupier and the requirement for notice of access that reflects the Standard Residential Tenancy Terms.

However it does not completely reflect the SRTT in a significant way by the omission of any reference to the occupier's permission. Note the SRTT clauses relating to access are much more comprehensive:

clS75 (1) The lessor must not require access to the premises during the tenancy except as provided by the law, this tenancy agreement, the Residential Tenancies Act, or an order of the tribunal.

(2) The tenant may permit access to the premises by the lessor at any time.

(3) If requested, the lessor or the lessor's agent must provide identification to the tenant.

76 The lessor must not have access to the premises—

(a) on Sundays; or

- (b) on public holidays; or*
- (c) before 8 am and after 6 pm;*
- other than—*
- (d) for the purpose of carrying out urgent repairs or for health or safety reasons in relation to the premises; or*
- (e) with the consent of the tenant.*

79 (3) If the parties are unable to agree on an appropriate time, the lessor or the tenant may apply to the tribunal for an order permitting access at a specified time.

Note reference to RTA in the current Unit Titles Act:

S 127 Effect of articles

- (2) An occupier of a unit (who is not the owner of the unit) is bound by each article of the corporation as if the occupier were the owner of the unit, unless the articles provide otherwise.*
- (4) An occupier of a unit who occupies the unit under a residential tenancy agreement within the meaning of the Residential Tenancies Act 1997 is not bound by any article of the owners corporation to the extent that the article is inconsistent with the prescribed terms (or terms to the effect of the prescribed terms) to which the agreement is subject under that Act, section 8.*

There should not only be a link to the RTA in relation to the tenant, the OC must clearly be bound to act within the terms of the RTA, as a lessor is. If this is not amended these access provisions are inconsistent with the RTA.

It is reasonable to assume that all occupiers of premises are entitled to the same basic access provisions as tenants. These provisions recognise the right to privacy and quiet enjoyment as well as exclusive use.

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| 51B should be amended to reflect the SRRT provisions regarding access and include a reference to 'reasonable' times, and a reference of disputes about access to the ACAT. |
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2.2. Division 5.3A People Appointed by owners corporation to help run owners corporation

The TU welcomes and supports the introduction of the Manager and Communications Officer positions and the associated codes of conduct. It is hoped that relevant stakeholders including the TU will be involved in the development of the relevant codes.

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| All relevant stakeholders should be involved in the development of codes of conduct for managers, communication officers and service contractors. |
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It is unclear what process is required to be in place in relation to complaints about these people in these positions and any claims of breaches of the codes. (cf comments on disputes). While there is reference to remedial breaches and what action the OC can take, there is no provision relating to the complaints process, who can complain and how this can occur. It is assumed that there would be an initial complaint to the OC before any attempt is made to take the complaint or dispute further. This would reflect the requirement for complaints processes for other community based and government organisations.

If individuals are to be employed by OCs and act in accordance with a code of practice there must a clear process for individuals who may be adversely affected by the actions of these individuals to make complaints to the body employing them.

This applies to service contractors as well.

The Act should include a process (or the requirement for a process) for making complaints relating to managers, communications officers and service contractors to the OC and this should be a process available to all people coming into contact with these individuals.

2.3. 88B Decisions about the use of Common Property

The TU questions why other occupants were not included in (b). Such usage of common property may have an effect on tenants, and not considering them within the process of deciding whether to allow such usage could lead to problems with the tenants and the lessor (owner). Including other occupants in the initial process may help to avoid unforeseen problems with others occupying properties and sharing common space.

This omission fails to recognise tenants as individuals who have a right to reasonable use and quiet enjoyment of the common property.

Add “and occupants” to S88B(b)

2.4. Division 6.5 Dispute Resolution

At the outset the TU congratulates the ACT Government on introducing a new dispute resolution mechanism through the ACAT that is accessible to tenants. This is recognised as a very significant change that acknowledges the need for tenants to have an accessible venue for the resolution of disputes arising out of the management of their homes as part of a unit title complex.

A matter of concern is that tenants are unable to make an application to the ACAT in relation to a dispute with a Manager, Communications Officer or a Service Contractor. This in conjunction with a lack of complaints process to the OC in relation to these positions would lead to no avenue for a tenant to make a complaint or resolve a dispute with individuals in these positions.

It is assumed that the reason for this omission in relation to disputes to ACAT is that these individuals are acting as agents for the OC and if there is a dispute relating to the actions of that agent tenant can make an application to ACAT for an order directly relating to the OC (or owner or occupier of another unit). An issue arising out of this is the lack of direct accountability for people holding these positions.

If this omission is to remain it is particularly important that there be a clear and transparent complaint process as detailed in previous comments at 2.3. It is assumed that an unsatisfactory outcome through such a process could then lead to an application to the ACAT, and therefore involve a final step incorporating an independent party.

2.5. S128 amendment of articles

In the interests of clarity and certainty S128 (4)(a) should add “and Regulations”

Also in the interests of ensuring sharing of information about changes that will affect all occupants we suggest that this Section also add a requirement for communication of amendments to all occupants of all units. All occupiers are bound by the articles therefore they must be advised immediately of any changes to those articles.

2.6. S129 Breach of articles

We welcome the introduction of the infringement notice process and the requirement for unresolved disputes to go through the ACAT

Part 1.3 Unit Titles Regulation 2001, Schedule 1

2.7. S9 Animals

At the outset the TU must repeat our statements from our 2006 submission that we absolutely objects to the ability of an OC to refuse pets. The ACT has laws relating to care of pets that apply adequately across the ACT community. There are other aspects of tenancy laws, UTA articles and other ACT legislation that effectively address issues where problems may arise such as noise, damage etc. It is not necessary for there to be restrictions on pets and in relation to tenants this is especially a problem because they have no way of participating in these decisions in relation to animals.

It is noted that other jurisdictions also provide for approval of pets. However we see this as an opportunity for the ACT to lead the way and recognise the role that pets play in people's lives, as noted by the RSPCA.

The issue of pets has arisen on many occasions through our advice line. The refusal of pets even though the lessor has agreed and the removal of permission for pets are common problems that are very stressful for tenants. At a time when the wider community is recognising the benefits of pets to people it is very disappointing that this continues to be an issue.

However, we must also note that we welcome and strongly support the amendments to this article. We note that the addition of the provision that consent must not be unreasonably withheld. This together the removal of the provision that permission could be withdrawn and the new dispute resolution process through ACAT does significantly improve the situation for tenants.

2.8. S11 What may an executive committee representative do?

While this provision regarding access does refer to access "at all reasonable times" there is no definition of reasonable times and this could cause uncertainty and possibly disputes. This can be rectified by making amendments in relation to access provisions as discussed above in 2..