



Tenant News

Spring/Summer 2005

Newsletter of the Tenants' Union, ACT

MORE TENANCY LAW CHANGE

In this edition of "Tenant News", we take a look at some further amendments that have been made to The Residential Tenancies Act 1997. The amendments are set to take effect very early in the new year, and promise to make some significant changes to the way the rental market operates in our Nation's Capital. As there are a number of important alterations being made to the Act, this article deals only with some of the more notable amendments. More information on additional changes will be available in the forthcoming newsletter.

Posting Clauses

The phrase "posting clause" refers to a term inserted into a lease permitting termination if either the landlord or tenant is forced to relocate because of a posting received through work.

Previously, under the Act posting clauses were seen to be inconsistent with the operation of the 100 prescribed terms, and thus were only effective if they were first given the go ahead by the Residential Tenancy Tribunal's endorsement process. However, under the revised legislation, posting clauses will no longer have to be endorsed in order to take effect.

Pursuant to the new "fair posting clause" in the amended legislation, both tenants and their landlords will have the capacity to terminate a tenancy agreement on just 4 weeks written notice in the event that either party receives a work posting to a location outside of Canberra. The inclusion of the new fair posting clause is touted as being a direct response to the increasingly large number of applications being made to the Tribunal for the endorsement of additional posting clauses.

Once the new provisions take effect, it will be prudent for tenants in the ACT to make some enquiries of their prospective landlords so as to ascertain the likelihood, if any, of their choosing to utilise the fair posting clause.

Deposit of Bond Monies

Landlords in the ACT are obligated to deposit with the Office of Rental Bonds, any bond they receive from their tenants. However, despite the fact that the obligation to deposit the bond is very clearly enshrined in the Act, at the moment there is no penalty prescribed for those landlords who fail to do so. Under the current legislation, tenants who

discover that their landlords have unlawfully retained the bond have only one real option - to apply to the Tribunal for orders forcing the deposit of the bond money as required by law. Arguably, this approach has been only mildly effective. The absence of a penalty, combined with a degree of confusion in the rental market as to the law relating to bonds means that currently there is little real incentive for any unwilling or ill-informed landlords to abide by their statutory obligations.

The introduction of a system of fines for non-deposit of bonds is a therefore a welcome move. Under the new legislation, the landlord or their agent will have a two week period in which to deposit the bond after it has been paid. If the landlord or agent fails to deposit the bond within this time, the tenant can apply to the Tribunal for orders which not only force the deposit, but also impose a fine for non-compliance.

(Continued on page 6)

INSIDE THIS ISSUE:

Christmas period opening hours	3
Hangin' on the phone....	4
Residential Tenancies Conference	6
RTT statistics	7
Housing as a Human Right	8
TU Update	9
Around the Country	10
Tenants in Tanzania	12
Renting statistics	13
Housing affordability	14
Office of Rental Bonds news	15

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Thanks also to Lyn, as usual without your help this would go nowhere.

The views of contributors to Tenant News are not necessarily those of TAS or the Tenants' Union ACT and the services do not accept responsibility for the views and opinions expressed by contributors in this newsletter.

CONTRIBUTE!

**We encourage, request and welcome all contributions to
*Tenant News***

This is a newsletter for tenancy issues, thoughts, notes, letters, cartoons...

If you are interested in contributing, call the office for details

02 6247 1026

Or post your contribution to:

PO Box 8, Civic Square ACT 2608.

Or email your contribution to:

TUACT@bigpond.net.au

Remember to include your contact details!



EDITORIAL

As you can see from this late issue, our little office has had a very busy year. Many issues, many changes and the usual amount of daily tenancy queries and problems. We have tried to cover as many issues as we can here.

Once again legislation has been a big focus — residential tenancy, public housing administration and regulation. The commencement of the new occupancy agreement arrangements continues to present us with new work and new issues. Very fortunately we were successful in a submission to DJACS for funds to run a project specifically on occupancies. The project will be starting at the beginning of 2006 and we look forward to hearing from occupants about issues.

The second raft of RTA amendments were passed and are due to commence next year. We were happy to see the introduction of regulation of tenancy databases and domestic violence provisions, although issues we raised about the difficulties posed by detail regarding DV orders were not addressed. Similarly we were very disappointed to see changes allowing Housing ACT to link new tenancy agreements with old debts. This went through despite condemnation throughout the community sector.

As can be seen by the detail in the issue, there continued to be a focus on issues around affordability, and the ACT had the very dubious honour of being the most expensive place to rent. The key to affordability is supply. We simply don't have enough affordable housing and the only realistic way to address this is to invest in more public housing. Pushing people out of public housing, culling and changing the waiting lists will not make the problem go away. It might not be palatable to a government wanting to save money but the current situation is more than not palatable to the many people struggling to keep their homes.

And finally, this is just before the end of the year and the holiday season. All of us at the TU wish everyone a safe, secure and prosperous holiday season, and here's hoping that 2006 will see more positive changes for tenants in the ACT.

RENTAL HOUSING UNAFFORDABLE NO MATTER WHERE YOU LIVE OR HOW YOU CALCULATE IT

Canberra is Australia's most unaffordable city and young single job seekers living alone cannot find affordable rental housing any capital city. These are just two of the shocking findings of a new national affordability bulletin released in October by the Tenants Union of Victoria.

The bulletin, which measures the availability of private rental housing for a range of household types, including singles in all Australian capitals (except for Darwin) shows that for hundreds of thousands of Australians, particularly those on certain Centrelink payments, there is nowhere for them to live without experiencing poverty.

"The tragic reality is that single renters on NewStart or a sole parent with one child relying only on their payments struggle to find affordable housing anywhere in Canberra, Sydney, Melbourne,

Brisbane, Perth, Adelaide or even Hobart without spending over 30% of their income in rent which puts them in housing related stress." said David Imber, Policy and Liaison worker, Tenants Union of Victoria.

"We think it's crucial to have the debate on housing affordability based on sound evidence. Having presented a snapshot of outcomes for 5 different income types we call on the Federal Government, as the providers of income support and rent assistance, to commit to a housing plan that includes providing genuine housing affordability. It should start by reviewing the levels of Commonwealth Rent Assistance and committing new money to a revitalised Affordable Housing Agreement," Mr Imber said.

(Continued on page 5)



Opening hours over the Christmas period

Tenants' Advice Service - The TAS phone advice line will be closed from Monday 26 December. The line will re-open on Monday 9 January 2006.

If people are in need of tenancy advice they can first check the TU website (www.tenantsact.org.au) and go to the advice pages. If more specific advice is needed they can call the Legal Aid Advice line on 1300 654 314.

Residential Tenancies Tribunal - The Tribunal Registry closes on 24 December 2005 and opens again on 3 January 2006. The last 2005 sitting day of the Tribunal is 22 December. 2006 sittings begin in the week starting 9 January. Note that this means that no new evictions will be ordered during this time.

For further information about the RTT go to www.courts.act.gov.au/

Welfare Rights and Legal Centre - WRLC will be closed from Monday 26 December. It will re-open on Monday 9 January 2006

Office of Rental Bonds - ORB will be closed from 4.30pm Friday 23rd December 2005. It will reopen for business at 8:30am on Tuesday 3rd January 2006

South West Tenants' Advice - For NSW tenants only. The phone advice line (1800 642 609) will be closed from 5pm Fri 23 Dec. It will re-open on Tuesday 3rd January 2006.

The Tenants' Advice Service offers free advice to all ACT tenants (public, private, community and others)



You can access the TAS line by calling 6247 2011
From 9:30am to 1pm Monday to Friday

Hangin' on the phone...

BREAKING UP IS HARD TO DO

Well folks, the end of the year is hard upon us.

All programming of worth has flown from our television screens. A trip to the shops is undertaken upon pain of Bing, and fairy lights, like a flickering mildew, begin to adhere themselves to the rooftops and down-pipes of suburbia.

A time for family, frivolity and all measure of flammable festive kitsch. And if the TAS line is anything to go by, it is also a time for many tenants here in the ACT to look at changing their housing arrangements. It seems that over the New Year, many tenants find themselves having to break their fixed term leases so as to facilitate a change in lifestyle. It also seems that there is a certain level of confusion in the rental market as to what consequences flow from a decision to break a fixed term lease.

So, for those tenants planning a New Year move, this instalment of "Hangin' on the phone" is dedicated to providing a very brief overview of what to expect if you have to break your lease.

A Few Words of Caution...

A decision to break the lease should never be reached lightly. As your potential liability for breach of contract is quite extensive, it is recommended that you investigate other options, such as contacting the landlord and asking for a mutual termination, prior to embarking upon an early termination. It should also be noted that in group houses, it is not possible for one tenant to break the lease on their own. If you are thinking about breaking your lease, it's a good idea to consult either TAS or the TU website to check whether or not there isn't some other less expensive termination option available to you.

Liability for Breach of Contract

If you have to leave your fixed term lease early, you are liable to pay a certain amount of compensation to the landlord, namely:

Compensation for lost rent.

Under section 107 of the Residential Tenancies Act (the Act), you become liable to reimburse the landlord for rent that was not paid in the period between when you vacate the property, and either a new tenancy is formed, the fixed term lease runs out, or 25 weeks goes past, whichever happens first.

Compensation for genuine advertising and re-letting costs.

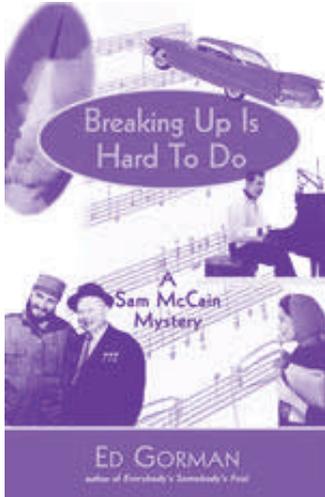
Section 107 of the Act also says that the landlord can ask you to reimburse them for genuine advertising and re-letting costs they incur as a result of having to find new tenants for the property. The maximum compensation available for these losses is the equivalent of one week's rent.

Mitigation of Loss

Pursuant to section 38 of the Act, in order to make a successful compensation claim against you, the landlord needs to be able prove that they have attempted to "mitigate their losses". This just means that the landlord (not you) has to try and find new tenants as soon as is possible after you notify them of your intention to vacate the property.

Breaking the Lease

If you have to break your lease, simply give written notice (make sure it is signed and dated and that you keep a copy and consider sending registered mail or hand deliver so they can't say they didn't get it). Then leave in accordance with that notice. The lease will be "broken" (terminated) when you leave the property and hand back the keys. Once you have terminated the lease, you don't have to hand over any more money until such time as either a new tenant is found, the fixed term lease expires, or 25 weeks go by, whichever happens first. It is at this point that the landlord can approach you for compensation.



Some Common Misconceptions

Contrary to popular opinion, if you break your lease, you are not liable for any of the following;

- Ongoing rental payments;
 - Any kind of "breaking of lease" fees;
 - Up-front or weekly/fortnightly/monthly contributions towards advertising costs;
- or
- Forfeiting your whole bond to the lessor as a penalty for breaking the lease.

You see gentle reader, by definition, a claim for compensation can only be made once the person making the claim has suffered some kind of loss, usually financial. Compensation awarded to landlords under s107 is no exception. As a tenant

breaking your lease, you are not required to even think about handing over any money to the landlord until such time as the landlord can say with confidence how much you owe them.

Payment of Compensation

Your liability under s107 can be determined when either a new tenancy is formed, the fixed term expires, or 25 weeks go by. This is the point at which the landlord will know how much money they have lost as a result of your decision to break the lease, and thus can approach you for compensation.

It is recommended that you do not offer to pay the landlord's claim unless you are completely satisfied of two things, namely,

- That the amount being claimed is an accurate reflection of the amount by which the lessor is out of pocket, and
- That the landlord tried hard enough to find new tenants ASAP once you had given notice.

If you have your doubts about either of these points, then you have the option of refusing to pay the landlord, thereby forcing them to approach the Residential Tenancy Tribunal for orders justifying the payment of compensation. There is no penalty involved in such a refusal, remember, it's up to the landlord to prove that they deserve to be awarded compensation.

(Continued from page 3)

The Tenants Union of Victoria released these statistics in its first national affordability bulletin. The different income types: including a young person on New Start; a Sole Parent with one child; and a couple with two dependent children, have been chosen as they represent the most likely profile of a Commonwealth Rent Assistance recipient.

There have been ongoing policy debates about poverty and what constitutes affordable housing. This bulletin presents three common ways of calculating the amount of money a person or family would have to spend on rent using the 25% standard public housing rental, 30% and the After Housing Income Henderson Poverty line measures

of housing affordability. The tables provide details of the amount of properties available for rent in those capitals, based on the amounts of money the person or family would have to spend on rent according to that affordability measure.

"The sad fact is that no matter what measure of affordability you use the outcomes aren't very good for large numbers of Australians who are unable to afford private rental housing without going into poverty."

State and Territory Governments should also strengthen rights for tenants in the light of many renters being unlikely to ever be able to afford to leave the rental market.

NEW LANDSCAPES – RETHINKING RESIDENTIAL TENANCIES

6TH AUSTRALASIAN RESIDENTIAL TENANCIES CONFERENCE

The 6th Australasian Residential Tenancies Conference brought together residential tenancy professionals who are involved in dispute resolution, and the management or administration of tribunals and residential tenancies legislation throughout Australasia.

The Conference is held every two years and the 2005 Conference was hosted by the NSW tenancy dispute resolution body, the Consumer, Trader and Tenancy Tribunal.

These conferences present a rare opportunity for workers to focus exclusively on residential tenancy law and disputes, to learn what is happening elsewhere and debate current issues. This year 221 delegates from across Australia and New Zealand attended. There were 4 streams:

- **Does one size fit all?** "Tenants" in the current market are widely spread across different socio-economic backgrounds and in different living arrangements. Landlords are also very diverse and include small investors with a single property, institutional investors with extensive holdings, not for profit providers and government. How will policy makers, administrators and decision makers ensure that regulation is relevant to a variety of circumstances? What are the drivers in the market place that will influence the nature of tenancy in the future?
- **Innovation and change.** Tenancy is an old concept in a modern world. How will this concept evolve? What are the challenges and solutions in this dot.com age? How do service providers keep pace with these changes?
- **Education and information strategies.** The current challenge for ensuring people are aware of and able to access services is to vary the means of the message. How are education and information strategies responsive to needs? What are the best strategies for ensuring landlords and tenants understand their rights and responsibilities? Does everyone get value?
- **Dispute resolution.** There is no sign of a diminution of disputes in the tenancy area. How are different types of disputes best dealt with? What works, what doesn't work and what might work? What is the potential for early intervention? Are there external factors that must be taken into account in the design of dispute resolution processes?

Papers available at: <http://www.restenconf.com>

(Continued from page 1)

Tenancy Databases

In what can only be described as a long overdue development, the new legislation imposes considerable regulation on the use of tenancy databases by landlords and agents.

At present, the use of databases to "blacklist" tenants is virtually unrestricted. Under the amended legislation, not only are there restrictions imposed upon the kinds of information that can be included in such databases; but prior to listing a tenant, a landlord or agent will be obligated to notify the tenant of their intention and disclose the nature of the proposed listing. Once notified, tenants will have the capacity to contest the listing by bringing a review before the RTT.

Landlords or their agents who fail to comply with the new regulations surrounding the use of tenancy databases risk the imposition of a fine of up to \$5000.

Substitution of Tenants.

Under the new laws, it will be possible for a co-tenant, sub-tenant, or simply an occupant residing in a rental premises, to seek orders from the Tribunal for a "substituted tenancy".

These substitution provisions are aimed primarily at providing greater security of tenure for those amongst the rental community who are exposed to domestic violence. In situations where a tenant has given an undertaking in court to leave a premises, or alternatively, where exclusion orders are in force, any person also residing in the premises can apply to the Tribunal for an order which would create a new tenancy in their favour. When faced with such an application, the Tribunal will be obligated to provide the landlord with an opportunity to have their say about the proposed substitution, however, the Tribunal is empowered to make a substitution order against the landlord's wishes.

The TU will be developing Factsheets and information on the website in the new year to provide further detail.

FOOD FOR THOUGHT

The following figures are from the Residential Tenancies Tribunal Annual Report:

	2004/5	2003/4	2002/3	2001/2	2000/1	1999/2000	1998/9
Total Applications	2764	2236	2305	2338	1492	1174	964
Apps – Endorsement	2018 (73%)	1458 (65%)	1026 (45%)	626 (26%)	296 (20%)	325 (27%)	150 (14%)
Apps – resolution of dispute	660	614	866	1712	1192	849	814
Endorsement granted	2070	1252	932	672	n/a	n/a	139
Apps – tenant	149 - 5% of total, 22% of disputes	151 - 6.7% of total, 24% of disputes	201 - 8.7% of total, 23% of disputes	151 - 6.4% of total, 9% of disputes	n/a	n/a	n/a
Apps – landlord	597	2061	1712	1561	n/a	n/a	n/a
Apps – Housing	168	196	302	620	n/a	n/a	n/a
Bonds	88	82	79	75	145	182	119
Access re inspection	15						

So, what does this mean?

There are a few significant issues highlighted by these figures:

* The first and most glaring being the number of applications by tenants as compared to the number of applications by landlords including Housing ACT. Tenant applications make up an average of only 6.7% of the total. An interesting situation considering that the only group that contributes funds to the RTT aside from application fees is tenants. A portion of interest from tenants' bonds goes to the RTT, no other Tribunal user group makes similar contributions.

Landlord groups have argued that this indicates there are few problems with landlords and mostly issues with "bad" tenants. Stats from the TAS service would indicate a different reason. This is the understandable fear of many tenants that making an application to the RTT will be found

against them, or the landlord will retaliate with harassment or eviction, or the agent will give them bad references or list them on databases.

* The vast number of applications (made and granted) for endorsement of inconsistent terms, indicates our concerns that providing a mechanism for changing the standard lease would counteract the reason for standard terms (ie consistency of leases and awareness of rights) were well-founded. It is alarming that landlords and agents are making changes to standard terms in such numbers. It indicates either a lack of awareness of how the current terms can be applied, or a clear desire to operate outside the terms established through a very long period of negotiation.

Where to from here? Tenants are encouraged to enforce rights, to query changes and to contact us!

HOUSING AS A HUMAN RIGHT

Around the world, across Australia and here in Canberra, people are increasingly talking about human rights.

The contemporary understanding of human rights comes from the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948. It was a statement of ideals which hoped to prevent any repeat of the atrocities of the Second World War. The concept of the inherent dignity and worth of every person is now familiar globally, nationally and locally. The ideals of the Declaration were translated into two international covenants, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). These covenants outline two sets of rights and provide the basis of international human rights law. The ICCPR protects rights including the right to life, liberty and security of person, to be presumed innocent until proven guilty, to take part in public affairs and to vote. It also protects the right to freedom of association, thought, conscience and religion and to freedom from torture, cruel, inhuman and degrading treatment. The ICESCR protects the right to social security, to join a trade union, to the highest attainable standard of physical and mental health, the right to education and to an adequate standard of living including adequate housing. Australia has signed and ratified both these Covenants, which means we have willingly undertaken to meet the standards they set out. However, these rights have never been incorporated into Australian law and we are one of the only Commonwealth countries that does not enjoy explicit protection of human rights.

The Australian government's response to the threat of terrorism has jeopardised the right to liberty, to a fair trial and the right to freedom of speech, thought and conscience. Given the current global and national political climate it is almost natural to focus exclusively on civil and political rights. However, the focus on these rights has often come at the expense of the economic, social and cultural rights, like the right to adequate housing.

As Scott Leckie has observed,

"Perhaps no other human rights treaty is violated in as obdurate or frequent a way as the International Covenant on Economic, Social and Cultural Rights, despite much conceptual and interpretive progress in this area of law over the past decade. This state of affairs has little,

however, to do with the nature of the obligations and rights established in the ICESCR. Problems of perception and resolve, rather than any inevitable limitation of law or jurisprudence, have kept economic, social and cultural rights wallowing in the relative purgatory of global efforts to secure human rights."

In many ways the ACT has been leading the way in human rights protection in Australia. The ACT Human Rights Act was passed by the Legislative Assembly in July 2004. It was the first bill of rights to be passed in any Australian jurisdiction. However, the bill that was passed maintained this neglect of economic, social and cultural rights. Despite the recommendation of the ACT Bill of Rights Consultative Committee, the final bill excluded the rights in ICESCR, which include the right to adequate housing. After its first year of operation, the ACT Human Rights Act is currently under review to consider whether the ICESCR rights should be offered the same recognition and protection as the civil and political rights.

Housing as a human right is well established in international law and jurisprudence. The government's obligations under these international frameworks are equally clear. That Australia is in breach of these obligations is undeniable. The last Australian census in 2001 estimated 100,000 people were homeless and a further 250,000 lived in unaffordable housing across the country. In the ACT it was estimated 1,229 people were homeless, with almost half of these being people aged under 25. Nationally, SAAP services turned away 113,300 requests for service during 2002-2003. ACT SAAP services have turned away 1,050 people in that time. As of August 2005 there were 611 people on Early Allocation Priority 1 status with ACT Housing, which is the highest general category of allocation. These people face a wait of, on average, twelve months until they might be housed. A further 336 are on Early Allocation Priority 2. These are people whose current housing is inadequate – they may be paying rent greater than 40% of their income, they may be in medical need or living in serious overcrowding. They cannot expect to be housed before they have spent two years on the waiting list, by which time their housing situation may have deteriorated so far that they are homeless.

The case for including the right to adequate housing in the ACT Bill of Rights is obvious to many

(Continued on page 15)

TU Update

The TU held it's AGM on Monday 21 November.

TU Committee positions:

President: Shae McCrystal

Treasurer: Anne Macduff

Secretary: Genevieve Bolton

General members:

Tui Davidson

Kate Ward

Viren Jackson

Willow Arthur and Toni Hunt

sharing a position for the SW Tenants' Advice Service.

The big news for the TU was on October 1 when the shared management of the Tenants' Advice Service with Welfare Rights and Legal Centre ended. The TU now manages the service in its entirety.

While this will not result in any significant changes for clients of the service or any people outside the TU, it does mean a new consistency for staff and the final realisation of the initial 1994 plan for TAS. We still retain strong links with WRLC and continue to share office space and work collaboratively.

The saga of the **review of the Residential Tenancies Act** has reached its end (in this bit) with the passing of the second raft of amendments in August. The TU will continue to raise relevant issues and urge reform as and when issues arise

Housing ACT related work continued through the Community Sector Reference Group. The Debt Working Group wound up as the HACT Debt Review Community pilot finished on 30 October. There were many positives out the project and tenants did see debts minimised and waived. We are yet to see the report going to the Minister about the future of HACT debt management. We hope that the lessons of the project are not lost.

The TU maintains its interest and involvement with **Community Housing** through participation in a range of forums, inquiries and studies including those focussing on the future of the sector.

The TU attended the **National Shelter Council Meeting** as the rep for NATO (National Association of Tenant Organisations) in October.

National Housing Conference was held in Perth after the National Shelter meeting. The conference provided the opportunity to share information with other tenancy and housing workers as well as academics and bureaucrats. Of particular interest was meeting with the Director of UK Shelter and discussing how the organisations works and UK housing issues.

Tenancy Week was held in the first week of October and once again was a great success with a well attended launch and various events highlighting tenancy rights, issues and services. The ongoing success of the ACT week has resulted in interest from other jurisdictions in coming on board for a national event.

IF YOU WANT TO FIND OUT MORE ABOUT ANY OF THE ISSUES DISCUSSED HERE,
PHONE: 6247 1026

or

E-mail us at: TUACT@bigpond.net.au

THE TENANTS' UNION WELCOMES NEW MEMBERS.

IF YOU WOULD LIKE TO JOIN SEND IN THE MEMBERSHIP FORM FROM THE BACK OF THIS NEWSLETTER

AND AROUND THE COUNTRY...

🏠 VICTORIA "HIDING" HOMELESS

The Victorian Government has been accused of trying to hide homeless people from overseas visitors during the Commonwealth Games in Melbourne next year.

The Government has booked and paid for hundreds of motel and hostel beds over the Games period using a special \$60,000 fund from the Department of Housing.

David Wright-Howie, from the Council to Homeless Persons, said bookings had been made in cheap but safe accommodation.

Housing Minister Candy Broad said ensuring low-cost accommodation was available to people at risk of homelessness during this time was important.

But Opposition Games spokesman Gordon Rich-Phillips said the government was behaving obnoxiously.

"They should have addressed the homeless issue over the six years they've been in power rather than attempting to hide these unfortunate people during the games," he said.

The Games in Melbourne will run March 15 to 26.

[SOURCE:.COM -10/11/2005]

🏠 ALL STUDENTS SHOULD HAVE ACCESS TO RENT ASSISTANCE

In July the Australian Democrats launched a petition urging the Government to stop discriminating against Austudy recipients, by making them eligible for Rent Assistance.

Democrats' Higher Education Spokesperson Senator Natasha Stott Despoja, who initiated the recent Senate inquiry into student income support, said it was unfair that thousands of students around Australia were missing out on up to \$98 each fortnight, simply because of their age.

Eligible full-time students under 25 are entitled to Youth Allowance, while full-time students aged 25 and over can only apply for Austudy. The basic payment rate is the same for both groups, but only Youth Allowance recipients are entitled to apply for additional Rent Assistance.

"The costs faced by students aged 25 and over are usually equal to if not greater than **those** faced by younger students," Senator Stott Despoja said.

"There is no rational basis for excluding older students from the extra assistance that Rent Assistance can provide.

"I urge all current and prospective students, parents and others in the community who are concerned about this anomaly to let the Senate know your views by signing this petition.

"Every signature represents another voice that deserves to be heard and may help end the discriminatory treatment of Austudy recipients," Senator Stott Despoja said.

Senator Stott Despoja also launched a postcard drawing attention to the anomaly.

Copies of the postcard and petition are available from Senator Stott Despoja's office.

🏠 LANDLORD DUTY OF CARE

In May the Queensland Supreme Court made a judgement (*Gration v C Gillan Investments Pty Ltd* [2005] QCA 184) which has significant implications for landlords with regard to ensuring that premises are kept in good repair and are safe for tenants to live in. A judge in Townsville awarded a tenant \$96,350 damages after the tenant was injured when she fell through her front steps. The ruling was that the landlord was obliged to ensure the premises were in good repair under the provisions of the Queensland Residential Tenancies Act 1994. The landlord lodged an appeal but this was dismissed with costs in a 2-1 majority decision. An Appeal Judge said that the progressive wood rot resulting from exposure to moisture was reasonably foreseeable by the landlord.

🏠 PUBLIC HOUSING CHANGES IN NSW

On 27 April 2005, the NSW Government announced major reforms to public housing.

The Government has called the reforms 'reshaping public housing'.

The NSW Tenants' Union has grave concerns about the reforms.

The reforms have yet to come into effect, and most of the detail of the new policies has yet to be worked out by the Department of Housing (the Department). This bulletin is based on information given by the Department to the Tenants' Union, and the Department's fact sheets. Check the

Tenants' Union's website for updates to this bulletin.

There are four main areas of the reforms that affect tenants and applicants (TU NSW concerns are in *italics*):

1. Eligibility. The Department will change its eligibility criteria for new tenants. All new applicants for public housing will have to show that they have a low income and either have complex needs (for example, they are frail aged, have a disability, or are homeless) or are unable to access affordable housing.

The TU's response: this reform will make public housing available to fewer people. Already, too many people who need housing cannot get into public housing. The real solution is to build more housing, not tighten the eligibility criteria.

2. Tenure. The Department will no longer offer security of tenure to new tenants. All new tenants will sign fixed term agreements, either short-term (2 years), medium-term (2-10 years) or long-term (10+ years). Before the end of the fixed term, the Department will review the tenant against new eligibility criteria (including income). If the tenant does not meet the criteria the tenancy will be terminated at the end of the fixed term.

The TU's response: this reform means people will be evicted because they improve their circumstances. It creates a poverty trap: tenants may lose their home if their income increases. For many people, secure, affordable public housing is what enabled them to improve their circumstances - when they are evicted they will be back at square one. This reform also means the Department will lose the higher rents paid by tenants who work and earn higher incomes.

3. Rents. The Department will change the way it calculates tenants' rebated rents. New and current tenants who receive Family Tax Benefit Part A will have increased portion of the benefit included in the Department's rebate calculation, increasing the amount of rent they pay. New and current tenants on 'moderate incomes' will pay 30 per cent of their income in rent (up from 25 per cent). The Department has said that these changes will commence in November 2005.

Also, the Department will conduct annual reviews of the market rent of premises, and as a result may increase market rents more frequently.

The TU's response: this reform means many tenants will pay more in rent, and some tenants

may pay a lot more. The 30 per cent rate for tenants on moderate incomes creates a poverty trap: tenants may actually lose more than they earn if their income increases. What the Department regards as a 'moderate income' is by most standards very modest - as low as \$46 000 for a couple with two children.

4. Water charges. For the first time, the Department will charge tenants for water, including where premises are not separately metered. Tenants of unmetered premises will pay a charge proportionate to their income, on top of their rent.

The TU's response: this reform means that tenants of unmetered premises will pay a charge for water that does not relate to the amount they actually use. These tenants will not be able to reduce the amount they pay by reducing the amount of water they use, so this is not really a 'water usage' charge at all - it's another rent increase. Also, the Department must ensure that tenants do not end up paying for water used in common areas and gardens, or lost through leaking pipes and old fittings.

Why the reforms?

The Government has estimated that the changes to rents and water will raise an additional \$640 million for the Department over ten years. The Department will also raise additional money from the Government. The Government says this will make public housing 'sustainable.' In return, public housing is to become a tightly rationed welfare service providing mostly temporary accommodation, instead of secure, affordable housing for a mix of people on low-moderate incomes.

The TU's response: this is a bad deal. The Department is making public housing tenants, who are often the poorest members of the community, pay for the long-term failure of State and Federal governments to properly fund public housing. There will be no additional housing built or bought as a result of the reforms - any new stock will simply replace stock that is destroyed or sold. As the population grows, public housing's share of the total housing stock will continue to shrink, and the pressures on public housing will continue to grow. This is not a sustainable direction for public housing.

Chris Martin

Policy Officer NSW TU

Check TU NSW website for further details:

<http://www.tenants.org.au/>

TENANTS IN TANZANIA - INVISIBLE DWELLERS?

In the urban housing debate and in state policy in Tanzania, as in many cities in the developing world, the problems of unplanned settlements with poor infrastructure and insecure tenure for plot holders are discussed. The vulnerable situation and insecure tenure of the many dwellers who rent one or two rooms in a house of a private landlord in these areas are however rarely highlighted.

The National Bureau of Statistics estimates that about 55 percent of the households in the capital city Dar es Salaam are tenants within the private sector while only about 6 percent rent within the public housing sector. In the other urban areas the corresponding figures were estimated to be 36 percent respectively 2 percent'. Other studies argue that a majority of urban Tanzanians are tenants in unplanned settlements'.

What are the conditions of tenants in private rental tenure?

Amos and his wife Layla rent two small rooms in one of the oldest unplanned areas in Mwanza City, the second largest town in Tanzania, located at the shore of Lake Victoria. They migrated here because of job opportunities and during the first period stayed with relatives. They live in two rooms with their three youngest children and one grandchild. Five tenant households live in the one-storey house together with the son of the landlord and his family. They share toilet facilities and the backyard, where activities such as cooking and washing take place.

A relative of Amos and Leyla found these rooms for them and they had to pay rent for 6 months in advance when they moved in. Also now they usually pay every six months. They only have an oral agreement with the landlord. In the house they have a cleaning schedule for toilets and outdoor spaces. Amos says that if guests come to stay for a few days the landlord should be informed. If something needs to be repaired the

landlord inspects it but according to Amos the tenants usually have to fix it themselves without reduced rent. The rent has been 8000 Tanzanian shillings, or 6 Euros, per month during the whole period Amos and Leyla have stayed here.

Shared bills

The house has electricity and a common water tap in the back yard. All households share these bills equally at the end of the month, which Amos does not like. Different households have different

electrical items in their rooms and thereby use different amounts of power, so why should he pay for those who use more? For water his family pays about 1000 shillings, or 0.8 Euro, per month while their share of the electricity bill usually is between 1000 and 5000 shillings. Amos believes that the landlord is obliged to give them three or six months of notice if he wants them to move out. As a tenant Amos would just move out when the contract expires. He considers his relationship with the landlord to be good.

The housing situation of Amos and Layla contains many characteristics of the private rental sector in Mwanza. It is very common with three or six months or even a year advance rent before moving into a house. After the first period landlords often accept shorter periods of payments.

Irregular incomes, but regular rental charges

Many houses in the unplanned settlements do not have water or electricity but when accessible it is a common source of conflict. The local state representatives (mitaa leaders) mediate in conflicts between landlords and tenants, which often concern tenants' failure to pay rent or bills. The necessity to have money in time for the rent is also an expressed disadvantage of rental tenure according to the tenants interviewed in my study. Most of them wish that they could buy a house in Mwanza and some have already bought plots in informal outskirts areas or further up on the hill tops. In a rapidly growing city with a high demand

(Continued on page 14)

THE SOBERING STATS

The following figures are from *Market Facts*, the quarterly residential property report from the Real Estate Institute of Australia. Data is for the June quarter.

The data is based on rents being advertised. They are median figures that do not give information about the range of rents nor what is being charged in existing tenancies. Vacancy rates provide a similarly skewed view.

Media stories highlighting patterns and increases may give landlords or agents an incentive to force excessive increases. Tenants must be aware that these figures have to be considered as part of a range of issues relating to the tenancy. If you receive notice of an increase you think is excessive you can try to negotiate a lesser amount, there is a process you can follow. Ultimately you can have the amount reviewed by the RTT. See our website or call the TAS line for details.

Over the year to June 2005, rent rises exceeded the annual CPI of 2.5% in seven capital cities.

THE CANBERRA STORY

The ACT vacancy rate was 2.5%, well below last year's rate of 4.3%.

This was accompanied by rent increases across most of the Territory.

City	3 BR House	2 BR T/House
Canberra	\$300	\$280
Sydney	\$260	\$280
Melbourne	\$230	\$220
Brisbane	\$240	\$220
Adelaide	\$220	\$170
Perth	\$204	\$174
Hobart	\$220	\$170
Darwin	\$285	\$210

THE NATIONAL PICTURE

In all capital cities median rents for 3 bedroom houses were higher in the June 2005 quarter compared with 2004. This reflected a decline in vacancy rates in all cities to levels well below 3%. The real estate industry sees 3% as a benchmark with rates lower than that indicating strong demand and higher indicating an oversupply.

Canberra rents	Houses			Flats/Units		
	Quarterly Median \$/week	Quarterly % change	Annual % change	Quarterly Median \$/week	Quarterly % change	Annual % change
City/Zone						
Inner Central						
2 b/r	290	-3.3	-1.7	260	4.0	18.2
3 b/r	330	-2.9	0.0	320	0.0	3.2
4 b/r	455	-1.1	1.1	390	0.0	5.4
Inner South						
2 b/r	250	-7.4	0.0	175	-7.9	-2.1
3 b/r	300	0.0	0.0	250	0.0	2.0
4 b/r	400	3.9	7.2	320	0.0	4.9
West & North						
2 b/r	245	2.9	2.1	195	8.3	8.3
3 b/r	290	3.6	1.8	250	0.0	0.0
4 b/r	360	0.0	2.9	290	3.6	3.6
Outer South						
2 b/r						
3 b/r	280	0.0	0.0	250	4.2	4.2
4 b/r	360	0.0	5.0	270	-1.9	1.9

ACT GOVERNMENT URGED TO ACT ON HOUSING AFFORDABILITY

The ACT Greens and social welfare groups have demanded the ACT Government get serious on a policy to provide affordable housing.

The Government received an Affordable Housing Taskforce report five years ago but has yet to announce moves to implement its recommendations.

Housing Minister John Hargreaves says a housing summit is planned in February with peak organisations.

"One of the things we need to understand about this affordable housing strategy and the homeless strategy is that it's a work in progress and always will be," he said.

"Along the way we have to stop and say are we doing well, can we do more? Are we doing well, yes we are. Can we do more? Yes we can."

But Ara Creswell, from the ACT Council of Social Service, says the problems are already well-known.

"We have lot of public housing but we don't have an affordable private rental market," she said.

"We have the highest private rentals in the country and this means that a whole lot of people can't access private housing, and they can't access the private rental market without putting themselves into poverty."

[SOURCE: ABC NEWS ONLINE - 22/10/2005]

(Continued from page 12)

for housing and a difficult employment situation it is however uncertain how many tenants will manage to get a house of their own. The wish to become house owners must be viewed in relation to the threat of irregular income many dwellers face, being self employed or casual labourers. Houses in unplanned settlements are built without official loans but from savings. Housing costs are therefore low after construction is completed and it can instead be used to generate income by subletting a room. Tenants view their stay in a particular house as temporary because they do not know if the landlord will sell the house, increase the rent or if conflicts will arise.

UN campaign on Secure Tenure

These aspects are important to bring up in the global debate connected to UN Habitat's ongoing campaign on secure tenure. A reason making it extra pertinent to highlight rental tenure and tenants is the promoted policy of upgrading unplanned settlements through initiatives from and with participation of dwellers. IS it possible to assume that tenants have the same need as the homeowners in the areas considering the perceived temporality of the stay in a rented house?

Tenants organise

Tanzania Tenants Association (TTA), under the leadership of Mr L.B.Nyoni, has been actively working for tenants' rights since 1984. TTA's headquarters is in Dar es Salaam, with a couple of branches in other towns. TTA frequently runs court cases against rent increases in the rental stock owned by the public National Housing

Corporation, with the help of the Rent Restriction Act of 1984. This law has however been under attack from landlords as they argue the Act gives them too many obligations and few possibilities to raise the rents. Recently the Parliament decided that the law will be repealed. TTA claims that the new amendment, that opens up for rent increases and evictions, violates the 1996 UN Istanbul Declaration of Human Rights.

Still, the rents within the private sector do not follow the Rent Restriction Act and these rents are usually much higher than within the public rental sector. The knowledge about the rental legislation among the actors in private rental tenure varies and the current change of the legislation will probably make it more confused.

It is difficult for TTA to change the conditions for tenants in the private rental sector because it is impossible to make sure that the law is followed by the large number of small scale private landlords. The private rental sector is essential for the urban housing provision in Tanzania and there are no signs that this will change in the foreseeable future. The Tenants Association has an obvious role to play in making tenants visible, particularly the large majority of the tenants in the private rental sector.

Jenny Cadstedt is conducting a research project about housing provision and rental tenure in Mwanza, Tanzania. The project will be published in 2006 as a doctoral thesis in Human Geography at Stockholm University. Contact the author at jenny.cadstedt@humangeo.su.se

Photo— David Dahmen

Article from "Global Tenant" August 2005, IUT

Rental Bonds Statistics

	2000-01	2001-02	2002-03	2003-04	2004-05
No of bonds lodged	11,699	11,879	11,793	12,141	12,774
No of bonds refunded	12,098	11,958	11,606	12,187	12,611
No of bonds transferred*	96	431	995	1,506	1,372
Average value of Bonds (\$)	865	965	1,065	1,088	1,108

* The dramatic increase in the number of transfers over the past five financial years can be attributed to a change in Office of Rental Bonds policy. Previously any transfer would be totally refunded and the bond relodged. Now tenants can transfer in and out of a bond or they may transfer the bond between properties.

Bond Trust Account

	2000-01	2001-02	2002-03	2003-04	2004-05
Value of bonds lodged	10,122,455	11,457,259	12,553,099	15,584,307	14,836,630
Value of bonds refunded	9,189,379	9,838,984	10,000,885	11,206,356	12,240,921
Value of bonds at 30 June	16,617,178	18,095,744	20,844,408	23,492,291	26,218,658

Amendments to the Residential Tenancies Act 1997 were passed on 17 August 2004, came into effect on 8 March 2005. The amendments

- ⌚ recognise and provide protection to boarders and lodgers for the first time;
- ⌚ modernise agreements for all tenants by removing unnecessary paperwork, including **removing the requirement for a condition report to be lodged with the Office of Rental Bonds**, and
- ⌚ improve the function of the Residential Tenancies Tribunal.

All condition of premises reports presented to the ORB from 8 March 2005, will be returned to the lodging party.

Ph: 6207 1178 www.rgo.act.gov.au

We would like to acknowledge and thank Pam Pryor for her photos of events relating to the Tenant Participation project that were published in the last newsletter

(Continued from page 8)

people who have experienced homelessness and unsafe, unsuitable, unaffordable or insecure housing. Protecting rights like the right to privacy and security of person without protecting the right to adequate housing fails to understand the impact of insecure housing on the rest of people's lives. Human rights are indivisible and interdependent, which means they are equally important and can not be exercised separately. The right to adequate housing forms the bedrock that allows people to exercise their full gamut of rights. How can we ensure people's right to protect their family without a house to do that in? As one young woman expressed, she needed to have a house before she could exercise her right to education. "I want to go to school again....now that I've got somewhere to live I have somewhere even just to catch buses to

school from! I need to go to school again. I really do." Though the ACT Human Rights Act protects the right to liberty and security of person, that is not a right that can be guaranteed to people who are sleeping rough in Canberra.

We need to protect all rights in order to offer any protection to one of them.

Leckie, Scott "Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights," Human Rights Quarterly, Vol. 20, No. 1, February 1998, p. 81, The Johns Hopkins University Press.

Australian Federation of Homelessness Organisations, http://www.afho.org.au/7_facts/stats/2002_03/2002_2003.htm

- Elena Rosenman
Housing as a Human Right in the ACT Project
ACT Shelter & ACTCOSS

The Tenants' Union (ACT)

The Tenants' Union is a group of tenants, both public and private, who have come together to promote the rights and interests of ACT tenants.

The TU provides a voice for tenants at all levels of decision-making.

The Tenants' Union provides information, advocacy, education, and advice through the Tenants' Advice Service.

Join the Tenants' Union and have a say on issues that affect your housing and your home.

Name: _____

Ph: _____

Address: _____

Date: _____

Type of tenancy (circle): *private, public, community, student housing, occupant, share housing, not a tenant*

NB: Only tenants can be full members

Annual subscription (GST inclusive):

\$11- Waged, \$2.20 - Unwaged,
\$11 - Share house (no. of tenants: _____)

\$55 - Organisation

ABN 99 664 903 582

TAX INVOICE

Make cheques payable to the Tenants' Union
ACT Inc. Please forward your subscription
and this application form to:

Tenants' Union ACT,
PO Box 8,
Civic Square, ACT 2608

**JOIN NOW & STRENGTHEN THE
UNION'S VOICE ON HOUSING ISSUES**

Tenants' Advice Service

is a free service for all ACT tenants. It is managed by the Tenants' Union ACT and funded by the interest earned from bonds lodged with the Office of Rental Bonds.

What we offer:

- * Tenancy **advice and information** through our advice line **(6247 2011, Mon. - Fri, 9:30am - 1pm)**
- * **Workshops and presentations** on tenancy issues, rights and responsibilities. Free of charge to community groups and organisations, school groups etc. Targeted to tenants, people who will become tenants or those who work with tenants
- * Leaflets and other **printed information** on common tenancy problems/issues
- * Tenancy **website:**
www.tenantsact.org.au
- * Articles for newsletters, tenancy information stalls and displays

**For further information call
6247 1026**

Tenancy Tips Leaflets:

- *Entering a tenancy, a general guide*
- *Share Housing*
- *Bonds*
- *Access and Privacy*
- *Repairs*
- *Sale of Premises*
- *Rent Increases*
- *Ending a Tenancy & Breaking a Lease*
- *Eviction*
- *Rent arrears*
- *Defending an Eviction*
- *Checklist for the Residential Tenancies Tribunal*