AUSTRALIAN NATIONAL UNIVERSITY STUDENTS' ASSOCIATION

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The Residential Tenancies Review Team
GPO Box 158
CANBERRA ACT 2601

Dear Sir or Madam,

RE: Submission

Thank you for providing the Australian National University Students' Association ("ANUSA") with the opportunity to present our views on this topic.

The ANU community encompasses around twenty thousand students, many of whom reside in the ACT. Thereby, ANU students are heavy users of the tenancy agreement and occupancy agreement systems.

ANUSA is a student organisation that advocates for rights of ANU students. As such believe we are qualified to represent to interests of students in this forum. We therefore present the enclosed submission for your consideration.

Kind regards

Cameron Wilson
ANUSA President

Submission to the Review of the Residential Tenancies Act 1997

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Introduction

This submission is made on behalf of the Australian National University Students Association Inc. ("ANUSA") and draws on the experience of the Association and Australian National University ("ANU") students in rental accommodation.

ANU students are heavy users of rental accommodation, using accommodation associated with campus (i.e. residential colleges), as well as private rental accommodation. ANU students using rental accommodation include a large number of international students, who are in a particularly vulnerable position when first entering the private rental market or first arriving in Canberra.

ANUSA's views are based on interactions with students adversely affected in the provision of rental accommodation through the provision of student services, such as legal services or welfare support services. Also prior to preparing this submission ANUSA sought views of students through online and face-to-face consultation.

This submission addresses the following issues:

(a) The inadequacy of occupancy principles to protect the rights of students in university accommodation;
(b) The need for more accessible standard tenancy terms, particularly students for whom English is not their primary language;
(c) The need for greater protection of students at end of tenancy from unreasonable landlord or agent demands against bond;
(d) The need for a better framework to regulate co-tenancies and co-tenancy disputes
(e) The potential value to students of improved minimum housing standards; so long as changes are based on proper evidence of likely impact on the housing market and costs for students;
(f) The need for more effective targeting of the housing black market which particularly targets vulnerable international students.

We also take this opportunity to welcome the review and to support the consideration of the review within a human rights framework. This is appropriate, as access to shelter is a basic human need and housing is a human rights recognized

not only in the International Covenant on Economic, Social and Cultural Rights, but declared in article 28 of the Universal Declaration of Human Rights. Also the ACT has through the ACT Human Rights Act, committed itself to upholding human rights.

As an organisation ANUSA recognises and supports human rights.

Protecting Students in Occupancy Arrangements

Overview

Many students encounter occupancy arrangements early in their entry into the rental marketplace. Students are generally vulnerable in this situation and particularly vulnerable are international students who have almost no knowledge of the local marketplace and due to their circumstances have almost no capacity to negotiate on an equal footing with accommodation providers. It is a classic situation where the law must protect the weak against the unreasonable impositions of the strong.

Suggested Revisions to Occupancy Principles

The provisions of the Act dealing with occupancy lump together very different arrangements, from a situation where a person is occupying a room in a private residence also occupied by the owner to caravan parks.

Accommodation associated with universities are different again and have their own peculiarities and needs. Serious consideration should be given to whether the occupancy framework is suitable for university accommodation.

Firstly there are a number of features that make such accommodation quite similar to residential tenancies. For example students generally expect that when they rent on campus accommodation, that they will be provided with what is effectively exclusive possession of a room. Sometimes, though more rarely, rooms may be shared. This 'private' space, is generally accompanied by some level of access to shared spaces. Such shared spaces may be additional amenities annexed to a small number of rooms (such as a kitchen or lounge) or broader shared spaces such as halls and computer rooms.

Students entering the marketplace have no power to negotiate 'fair' terms with occupancy providers. As the number of providers is very limited, they must simply accept what the occupancy provider chooses to offer.

According to the information available to us there are a number of 'unfair' arrangements which ANUSA has observed in the last 12 months or so in occupancy agreements include provisions which have the following effect:

1. Unfair lock in provisions, which require students to take out 12 months contracts which generally extend over a three month period when students have returned home. Students generally have no need for accommodation during this period, but are compelled to lock themselves in over the holiday period, as this suits the financial interests of the accommodation provider.
2. Unlimited and unfair provisions giving wide discretion to accommodation providers to impose additional and sundry fees on students; which increase costs for students and which they are unaware they may face. Examples of fees which ae imposed are 'sundry charges', 'early termination fee', 'administration/application fee', 'community spirit fee', 'processing fee', 'cleaning fee', 'apartment move fee', 'building move fee', 'repairs and maintenance fee', 'car parking' fee, 'replacement key fee', 'utilities and services fee', 'data usage fee'.
3. Unfair provisions which impose indemnity by a student in favour of the occupancy provider or which waive liability of the occupancy provider for harm caused by the occupancy provider.
4. Unfair provisions which require students to provide direct access by an accommodation provider to their bank account.
5. Unfair provisions for a security deposit held by the occupancy provider which the occupancy provider can call on 'in the discretion' if 'in their opinion' the student has left the premises unclean or has caused damage.
6. Unfair provisions which allow the occupancy provider to evict the student for breach of rules and standards.
7. Unfair provisions which require students to pay the entire amount of an occupancy if they leave the occupancy early.
8. An unfair provision where if an occupancy provider considers that a student has breached the agreement, they can cause a university to place a 'negative service indicator' on release of the student's results from the university.
9. Unlimited power in the occupancy provider to make rules binding on the occupant.
10. Denial of 'exclusive possession' to spaces exclusively used by a student

11. Potentially unfair limitations on occupant have guests visiting them at the occupancy.
12. An unfair provision where students are locked out of their accommodation if rent is 24 hours late. Including when late payment is due to failure of the accommodation provider's payment system.

It will be obvious that provisions of this kind place students in an occupancy arrangement in a significantly different, and worse, position than a person holding rights as a tenant under the standard tenancy terms.

Also notable in the occupancy agreements we have reviewed is that they do not refer to or spell out the occupancy principles set out in section 71E of the Act.

Apart from the fact that student occupancy arrangements in residential halls are relatively sui generis, another important factor is that it is an area that is readily easily regulated as there are only a handful of occupancy providers who use virtually the same terms for thousands of students.

In our view the current situation points to students lacking market power to be able to ensure conditions imposed on them are fair, a need for legislative reform to ensure that students are better protected in occupancy agreements.

Recommendations

1. That provisions be added to the Act specifically dealing with the content of occupancy agreements governing occupancy of accommodation on campus.
2. Preferably that standard occupancy terms be imposed on providers of student accommodation to better protect the rights of students. That such standard terms include provisions such as the following; or alternatively that they be included in the Act.
3. That providers of student accommodation be prohibited from imposing charges and fees other than those permissible in a residential tenancy arrangement.
4. That providers be permitted to collect bond, but be required to deposit bond with the Office of Regulatory Services. We note that with the number of students residing in ANU UniLodge residences, the bond from these occupancy

agreements alone would generate interest sufficient to cover the salary of an additional staff member at the Office of Regulatory Services.

5. That providers be prohibited from imposing a residential tenancy term which requires a student to maintain accommodation outside the normal academic year.
6. That providers be prohibited from requiring students to grant an accommodation provider "Direct Debit" authority over the student's bank account.
7. That the ground on which eviction of students in an occupancy arrangement can take place be regulated, and that the regulations provide students with a right to have ACAT review the grounds of the proposed eviction.
8. That occupancy agreements be required to include the occupancy principles and reference to the rights of occupants in relation to an occupancy dispute.
9. That occupancy providers be required to obtain approval of ACAT of any proposed occupancy terms prior to imposition, either if they vary from any standard occupancy terms approved under the Act or if they are developed without reference to standard occupancy terms under the Act; which ACAT would review for consistency with the standard tenancy terms (except where inapplicable); the occupancy principles and fairness between the parties.

Making the Standard Tenancy Terms More Accessible to Users

Overview

The language of the law is an important factor in the practical access that students have to the protections the law is intended to afford. This is particularly true for international students who will be even more greatly impacted by difficult legal language. To quote one student *"We read about our rights online but didn't fully understand it and were mainly guessing".*

The standard tenancy terms can in our view be made considerably more accessible by undertaking a plain language redrafting of the terms. Such an improvement in language is also of benefit to landlords, who themselves benefit from greater access, and who can anticipate a reduction in unnecessary disputes, if the language of the standard tenancy terms is more readily understood by all parties to a transaction.

Redrafting the Standard Tenancy Terms to make them more accessible for all users

Improving the language of the Standard Tenancy Terms is a low cost initiative that could make a significant difference to landlords and tenants; making clearer to all parties their rights and responsibilities and reducing unnecessary disputes.

Early this year, ANUSA, together with the ANU Postgraduate and Research Students Association, recognised that more accessible language for the standard tenancy terms was a need that students, particularly international students, faced. To address this need an unofficial 'plain language version' of the standard tenancy terms was prepared. A copy of this plain language version with its accompanying guide is enclosed. (Attachment A). It should be noted that this 'version', although it sought to closely mirror the standard tenancy terms themselves; was not intended to be fully comprehensive. Also, in some areas the plain language version, prioritised the accessible communication of key concepts, over drafting precision. As part of the exercise of making the standard tenancy terms more accessible; in some places additional information drawn from the Act was included in the plain language version, so that a reader did not need to refer to the Act to understand the intended meaning of a clause.

We believe this project provides a viable proof-of-concept that could be readily translated; with further refinement; into the official version of the standard tenancy terms. Such a re-drafting need not change the meaning of the standard tenancy terms.

Although suggestions for 'plain language' often evoke 'controversy', with some suggesting that legal precision is more important, achieving plain language should not be controversial.

Firstly, offices responsible for legal drafting, recognise and accept plain language as an important goal of legislative drafting. For example Australia's Parliamentary Counsel's Office affirms its commitment to plain language drafting of Australian legislation:

> *We also have a very important duty to do what we can to make laws easy to understand. If laws are hard to understand, they lead to administrative and legal costs, contempt of the law and criticism of our Office. Users of our laws are becoming increasingly impatient with their complexity. Further, if we put unnecessary difficulties in the way of our readers, we do them a gross discourtesy. Finally, it's hard to take pride in our work if many people can't understand it.*[1]

Secondly, the audience for law has widely expanded, due to the availability of the law online. As observed by the First Parliamentary Counsel of the United Kingdom:

> *Legislation affects us all. And increasingly, legislation is being searched for, read and used by a broad range of people. It is no longer confined to professional libraries; websites like legislation.gov.uk have made it accessible to everyone. So the digital age has made it easier for people to find the law of the land; but once they have found it, they may be baffled. The law is regarded by its users as intricate and intimidating.*[2]

The readership of law is no longer confined to lawyers, and this is particularly the case for an instrument such as the standard tenancy terms.

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[1] (2003), *Plain English. Technical report*, Australian Commonwealth Office of Parliamentary Counsel.

[2] (2013) *When Laws Become Too Complex: A Review into the Causes of Complex Legislation*. Technical report, United Kingdom Office of Parliamentary Counsel

> *It seems once to have been supposed that law was the preserve of lawyers and judges, and that legislation was drafted with them as the primary audience. It is now much better understood that acts of Parliament (and regulations too) are consulted and used by a large number of people who are not lawyers and have no legal training.*[3]

Thirdly ensuring that laws are accessible as possible for its users is consistent with principles of human rights, fairness, regulatory efficiency and the rule of law.

> *It is a fundamental precept of any legal system that the law must be accessible to the public.*[4]

> *Citizens should be able to know and understand the law that affects them. It is unfair to require them to obey it otherwise. This is an aspect of the rule of law.*[5]

Fourth, a document such as the standard tenancy terms, is of course intended primarily as a document to be read and used by those who enter into tenancy agreements. It should be designed with their needs as users in mind.

Finally it is a particular concern for ANUSA, that international students unfamiliar with the Australian legal system and for whom English is not a primary language, will find the current drafting of the standard tenancy terms difficult to use. It would also be far more feasible for a plain language version to be translated into relevant community languages. The availability of the standard tenancy terms in other languages would also be of advantage. We address this issue below in respect of the "irregular" tenancy market.

Although the plain language version ANUSA developed is not as rigorous as would be required for an official version, ANUSA has no difficulty with the language we have developed being drawn on, should this be of use, in any redrafting exercise.

Recommendations

[3] (2008) *Presentation of New Zealand Statute Law*. Technical Report 104, New Zealand Law Reform Commission and New Zealand Parliamentary Counsel's Office.
[4] (2008) *Presentation of New Zealand Statute Law*. Technical Report 104, New Zealand Law Reform Commission and New Zealand Parliamentary Counsel's Office.
[5] (2007), *Presentation of New Zealand Statute Law: Issues Paper 2. Technical Report 2*, New Zealand Law Reform Commission and New Zealand Parliamentary Counsel's Office

1. That the standard tenancy terms be redrafted to make them more accessible to tenants, agents and landlords; drawing on plain language principles.
2. That the redrafted standard tenancy terms be made available to tenants, agents and landlords when a lease is entered into.

Protecting Students at Tenancy End of Life

Overview

A frequent area in which students seek assistance of ANUSA, is in connection with disputes with landlords or agents and the end of tenancy. Often students are in a position where they believe that landlords are making unreasonable demands against them for cleaning or damage; which they have felt they have remedied; or for which they feel they are not responsible. They are in a powerless position and often feel they have little choice but to give in to demands against their bond, even where they consider these demands to be unreasonable.

Students consulted as a part of this review process told of situations where condition reports were never provided, items effected by normal wear and tear for which tenants were called upon to replace, damage and dirt mentioned in original condition reports for which landlords attempted to withhold bond, to name a few. To quote one student,

"Sometimes the standard that the real estate requires at the end of a lease is not fair. Previously I've left a house in a cleaner condition to when we rented it but the real estate wasn't satisfied with the condition and wanted to withhold our bond".

Clarifying the Burden of Proof when Financial Demands are Made at End of Tenancy

In most areas of law, if someone makes a financial demand against another person, the burden is on that person to establish their loss, rather than on the party against whom the claim is made to establish that the loss does not exist.

In practical terms students often find themselves in the latter position. The reason for this is that there is generally a differential recording of the condition of premises at the start and at the end of a tenancy. A condition report is often all that is prepared at the beginning of the tenancy, and that condition report is unlikely to be a comprehensive record of the condition of the premises at the start of the tenancy. It is usual however for comprehensive photographic "evidence" to be collected at the end of a tenancy, when a dispute arises. In the absence of the corresponding

photographic record at the outset, the tenant is placed in the position of having to 'prove' that the damage shown in the later photographs was not there at the beginning of the tenancy. This is unfair.

The burden of establishing the condition of the premises at the beginning of a tenancy should lie on the person claiming a loss because 'damage' has been caused as compared to that earlier condition, or because the premises are 'not as clean' as at the beginning of the tenancy. While a condition report may be a factor in determining the condition at outset; it should not be considered as a reliable comparator against photographic evidence at the end of a tenancy purporting to show 'new' damage.

The current uncertainty that a tenant faces in defending themselves against a claim of having caused damage; means that the tenant will often settle the matter in a situation that really provides an unfair windfall gain to the landlord.

In part, this is due to the situation currently; where the default for release of bond is that the tenant typically believes they must negotiate with the landlord or agent to obtain agreement to release the bond. They are unaware, without legal advice, that they can apply directly to the rental bond board for release of the bond. Tenants generally have limited financial resources, or have limited experience of the rental market. International students have the additional limitation of uncertainty about their legal rights and obligations in an unfamiliar legal system, with additional language difficulties. All this puts students in a vulnerable situation when faced with landlord or agent demands and they may settle for retrieving part of the bond at least; in order to obtain the required signature. While many landlords and agents do the right thing; there is a subset that in our experience, will use the power imbalance they possess to unfairly extract financial advantage from the vulnerable. This power dynamic would not apply if bond were automatically released to the tenant on application of the tenant to the Office of Regulatory Services; with release occurring unless the landlord has filed a claim with ACAT for recovery of damages or cleaning costs. The tenants control over the bond, would be further underlined, if the tenant were required to initially deposit the bond and provide a receipt to the landlord (thereby establishing a relationship and knowledge of the regulatory authority).

A situation commonly encountered by students is that they are subjected to

demands to pay for having carpets professionally cleaned. This is sometimes the case even where the tenants have already had the premises professionally cleaned by another party.

This is an area where the standard tenancy terms would benefit from clarification: i.e. a clear statement in the standard tenancy terms that the landlord cannot require the premises to be professionally cleaned at the end of a tenancy.

Recommendations

1. That the Act provide that a party alleging that a tenant has caused damage (beyond fair wear and tear) as compared with the condition at the commencement of the tenancy have the burden of proof of providing evidence that the premises were *not* damaged at the commencement of the tenancy, by providing equivalent evidence to that which is purported to show that the condition of the premises has changed at the end of the tenancy.
2. That any evidence that may be relied on at a later point to establish the condition of the premises at time of commencement be provided to the tenant on the commencement of the tenancy, or be inadmissible.
3. That the provisions of the Act concerning release of bond to a tenant be amended so that the tenant is not required to enter into negotiations with; or obtain the signature of the landlord, for release of the bond; but that the bond be automatically released unless the landlord has filed an application before ACAT for damages or cost of cleaning or other breach of the standard tenancy terms. That the Act be amended to require the tenant to deposit the bond with the Office of Regulatory Services.
4. That the standard tenancy terms be amended to provide that a landlord cannot require a tenant to have the carpets professionally cleaned at the end of a tenancy (or that a landlord cannot impose that requirement; unless the carpets were professionally cleaned immediately prior to the commencement of the tenancy).

Share housing – a better framework for co-tenant relationships and disputes

Overview

Share housing is a reality for students who move into the private rental marketplace. It is an important mechanism that makes the rental market available to students. From this viewpoint any change of legislation should not result in students finding it more difficult to access accommodation because landlord's wish to avoid imposition of special conditions applicable to students. On the other hand students are in a different position to, for example, families, who enter into 'shared' tenancy arrangements. Couples and families of course generally involve longer term and more stable relationships than might be true in respect of students in share housing, who are in no more than a 'marriage of convenience' in respect of shared tenancy. The reality however is that those in share housing can and do have disputes with each other; however the Act is almost entirely framed as if the only relationship which matters is that between the landlord and the tenants.

The need for a better regulatory framework for co-tenancy relationships and disputes

Share housing raises many complexities, as noted by the Discussion Paper. In some respects those complexities engage questions of the relationship between the tenant and the landlord. In our view caution should be considered before imposing new requirements in the Act that might cause landlords to be reluctant to rent to students in a share housing situation.

On the other hand it is clear that the regulation of share housing as between co-tenants or 'purported' co-tenants is inadequate.

Actions of co-tenants may adversely affect other tenants in a variety of cases, which we have seen in practice. For example:

- Effectively causing the 'eviction' of a fellow tenant, by conduct making the premises unliveable for another tenant;

- Breaching the tenancy agreement in a way that exposes a fellow tenant to liability;
- Abandoning the tenancy and leaving the burden of the tenancy on another tenant;
- Otherwise failing to meet fair and reasonable obligations to other co-tenants;
- Purporting to 'rent' to another tenant where there is no right to do so.

Each such scenario can have a considerable impact on a tenant, yet there is no provision in the Act which explicitly sets out the availability of a process or remedy which an injured tenant could pursue in such circumstances.

Generally speaking, while the ACAT process is accessible to tenants non-litigious mechanisms fostering dispute resolution may be preferable to a process which implies litigation with former co-tenants. An explicit mediation mechanism, through ACAT, might enable most issues to be resolved. Where this is unsuccessful more formal ACAT processes through an application might be initiated.

Sometimes a dispute will arise with a co-tenant, only in a situation where the tenants as a whole are already in a dispute with a landlord. In that case, an appropriate course of action may be for a tenant facing an action by a landlord, to seek to join a co-tenant to the dispute. This process could be made explicit in the Act.

Recommendations

1. That the Act be amended to set out explicitly the rights and obligations of co-tenants as between themselves.
2. That the Act provide for a process of mediation, with the assistance of ACAT, where a dispute arises between co-tenants.
3. That the Act provide that were mediation fails to resolve a dispute a tenant may take action against a co-tenant to seek recovery for breach of any obligation owed to them by that co-tenant.
4. That the Act make explicit the right of a tenant to join a co-tenant as a co-defendant in an action brought by a landlord against the tenant.

Minimum housing standards – an evidence based approach

Overview

A reality for students is that they will often be forced to accept the least expensive accommodation available in the marketplace, because of the limited financial resources they have. In this context, students are adversely impacted if new regulatory requirements increases the overall cost burden on them. However, students are equally adversely impacted if minimum housing standards are not sufficient to ensure they enjoy an appropriate standard of living while in rented accommodation. However there are certain minimum standards that either for human rights reasons, or common sense, should be applied.

A case for evidence based minimum standards

As noted above, there is uncertainty as to how increasing minimum standards may impact on the most vulnerable in the housing market. In particular there may be a trade-off between improving minimum standards and the affordability of accommodation. On the other hand improvement of minimum standards may in some cases sufficiently offset other costs for students as to make the minimum standard an overall benefit. For example requirements in respect of energy or water saving devices, or housing insulation may reduce overall costs for tenants in a way that offsets any rent increase.

We consider that consideration should be given to increasing minimum standards after collection of evidence on the overall impact of imposing any proposed minimum standard.

A situation that regularly arises for students is overcrowding. There are frequent occurrences where a standard house will be rented out to 8-10 individual students under a form of tenancy or occupancy agreement. This is regularly done by landlords converting living areas and garages into subdivided bedrooms. Often students will be unaware of how many people will end up living in the residence at the time that they sign occupancy agreements. Overcrowding is a pertinent issue for minimum housing standards as it involves sanitation, personal safety and fire safety issues. We note that overcrowding has been an issue that has appeared before ACAT in the past with

mixed outcomes[6]. This speaks to the need for minimum housing standards to cover overcrowding. However consideration would need to be given to the specifics of the standards so that larger families are not excluded from the rental market, whilst still protecting people from overcrowding.

In our view safety enhancements that protect the lives of students from readily avoidable risks (such as installation of fire alarms), should be mandated on all residential tenancies. Both landlords and tenants should be jointly and severally responsible for ensuring that smoke alarms are functional.

We also note that window coverings for privacy are consistent with the right of privacy which is a fundamental human rights.

Further requirements such as proposed in Tasmania for provision of toilets, bathrooms, cooking facilities, electricity and heating seem to us to be essential in any tenancy.

Recommendations

1. That evidence based enhancement to minimum standards be considered and implemented, taking into account the overall impact on tenants.
2. That safety and privacy minimum standards should be mandated (such as fire alarms and window coverings) for tenancy and occupancy situations.
3. Relating to recommendation 2 above, hard-wired smoke alarms should be mandatory in new tenancies as a minimum.
4. That other 'common sense' minimum standards such as the availability of cooking and cleaning facilities, be mandated for tenancy and occupancy situations.
5. Consideration be given to minimum standards to prevent overcrowding in a residence, either under a single tenancy or multiple tenancies.

[6] CONTEH & FAN (Residential Tenancies) [2011] ACAT 45 (28 June 2011), BANGURA & FAN (Civil Dispute) [2013] ACAT 38 (4 June 2013)

Breaches of the Act – dealing with the 'irregular' market

Overview

Although generally speaking, our experience does not suggest a widespread problem with non-compliance with the Act where both landlord and tenants are aware of and operating within the framework of the Act, there remains a significant 'irregular' marketplace, which particularly preys on international students unaware of the operation of the Act. International students are sometimes seriously exploited as a result. Another circumstance in which protections of the Act may not be properly applied is where there may be a misunderstanding as to the coverage of the Act over 'granny-flat' situations. Greater effort is required to ensure effective community education in community languages to reduce illegal exploitation of vulnerable students.

Protecting the most vulnerable from 'irregular' housing arrangements

International students, when they arrive in Canberra or first enter the private rental market, may be unaware of the regulatory framework protecting their rights. While the issue is unlikely to be limited to any single group, we have noted that the issue appears to arise more frequently for students from mainland China. That is students are either not given any agreement whatever, or as commonly are given a brief document as a 'tenancy agreement' that is inconsistent with the standard tenancy terms. Sometimes it is unclear if the person purporting the 'rent' the premises, has in fact any right to do so. These situations may include a student being deprived of exclusive possession, having bond held by the 'landlord' rather than deposited with the Office of Regulatory Services, dealing with a party who cannot be traced after the arrangement breaks down and other problems.

The existence of such arrangements points to the need for targeted community education in relevant languages to reduce the incidence of unlawful behavior and protect students who may otherwise be exploited.

Recommendations

1. Greater effort be made in the field of community education to lower the vulnerability of new entrants to the rental marketplace.

2. An undertaking to work with housing websites to automatically provide standard tenancy terms by way of email to the parties posting advertisements in real estate categories.

Conclusion

In conclusion we note that many of the issues faced by students in the above submission apply also to young professionals, families and expat workers. Gaps in legislation, along with ambiguous terminology, have an impact on tenants as well as landlords. We therefore submit that the recommendations outlined in this submission be considered for the befit of ANU students as well as the greater Canberra community.

On Behalf of the ANU Students' Association

Michael Curtotti
ANUSA Legal Officer

Carolyn Halliday
ANUSA Student Assistance Officer

Attachment A

Plain Language Tenancy Guide

Standard Tenancy Terms in the ACT: A Plain Language Guide

A PLAIN LANGUAGE GUIDE TO TENANCY IN CANBERRA

INTRODUCTION

This guide provides a plain language version of the 'Standard Residential Tenancy Terms' that apply in the ACT. This guide also gives a broad description of the tenancy system in the ACT.

WHERE DO I FIND THE LAW?

Tenancy law in Canberra is set out in the *Residential Tenancies Act 1997* (ACT) (the 'RTA'). The RTA covers private, public and community residential tenancies.

The Standard Residential Tenancy Terms are found at the back of the RTA and apply to all tenancies. The standard residential tenancy terms apply whether or not they are agreed in writing by a landlord and tenant. It is a good idea to be familiar with them.

Attached is a plain language version of the standard residential tenancy terms. They are not the official version, but are intended to make the official version easier to use and understand.

WHERE CAN I GET LEGAL ADVICE ABOUT A TENANCY SITUATION?

If you are an ANU student legal advice is available from the ANUSA/PARSA legal service. The ANUSA/PARSA legal page can point you towards other free legal providers.

WHO IS A TENANT?

Someone is a tenant if they pay rent to a landlord for a place to live.

WHO IS NOT A TENANT?

But, some rental arrangements aren't tenancies. For example if you are staying in student accommodation, boarding or lodging you are not a tenant. You are an 'occupant' and have limited rights. This guide only describes tenancies it doesn't apply to occupancy agreements.

WHAT IS A LESSOR (LANDLORD)?

The owner of the property is known as the landlord. 'Lessor' is another word for landlord. A landlord gives a person ('the tenant') a right to live in the landlord's property.

WHAT IS AN AGENT?

A landlord may ask an agent to manage the tenancy for them. If there is an agent, the tenant usually deals with the agent rather than the landlord.

DOES A TENANCY AGREEMENT HAVE TO BE IN WRITING?

No, but it's better if it is. A tenancy agreement can be completely in writing, completely verbal, or a combination of both (s 6A(2) RTA). The standard residential tenancy terms

apply whether your agreement is in writing or not. You should ask for a written agreement and make sure the standard residential tenancy terms are attached.

DANGER SIGNS

The following are some danger signs:

- Any written agreement that doesn't look like the standard tenancy terms;
- No written agreement at all;
- Make sure the person who claims they are the landlord is the real owner or that the person has the permission of the landlord to rent the property to you;
- Other tenants can't give a legal right to rent to property unless they have the written permission of the landlord;
- Watch out for online scams where the landlord or 'agent' is overseas. Ensure that you are shown through the property before paying any money.
- Fixed tenancies are **fixed** – it's hard to end them before the agreed date.

WHAT'S IN A RESIDENTIAL TENANCY AGREEMENT?

It is important that you read your residential tenancy agreement carefully. The agreement sets out how long the tenancy lasts, the amount of rent to be paid and the time and method of payment, and any special conditions.

WHAT ARE THE TWO TYPES OF TENANCY AGREEMENT?

A tenancy agreement is either a fixed term tenancy or a periodic tenancy.

A **fixed term** tenancy starts on an agreed date and lasts for an agreed period (usually 6 or 12 months). If a tenant stays on at the end of the fixed tenancy it automatically becomes a periodic tenancy.

A **periodic** tenancy does not have an agreed end date. It begins on the agreed date agreed and ends when either the landlord or the tenant end the agreement (see STTs clauses 96 to 97).

WHAT IS A BOND?

The "bond" is an amount of money that a tenant may be asked to pay as security for the landlord. The bond is payable to the landlord, or their agent, and must be lodged with the Office of Regulatory Services (ORS) (Rental Bonds). You are entitled to get the bond back at the end of the tenancy, unless ACAT orders that the landlord can keep part or all of it.

FURTHER INFORMATION

Further information can be obtained from:

- The **Tenant's Advice Service** which offers free legal advice for all ACT renters (tenants and occupants).
  - PH: 6247 2011
- The **Tenant's Union (ACT)** web pages which provide publications, information, workshops, law reform and news on renting issues.
  - PH: 6247 1026
  - www.tenantsact.org.au
- The **Welfare Rights and Legal Centre** which provides free legal advice and assistance for income tenants.
  - PH: 6247 2177
  - www.welfarerightsact.org
- The **Office of Regulatory Services (Bonds)** which deals with bonds lodgement, return and inquiries.
  - PH: 6207 1178
  - www.ors.act.gov.au
- The **Office of Regulatory Services (Fair Trading)** which deals with complaints against real estate agents.
  - PH: 6207 0400
  - www.ors.act.gov.au
- The **ACT Civil and Administrative Tribunal** which deals with dispute resolution and enforcement of tenancy legislation.
  - PH: 6207 1740
  - www.acat.act.gov.au
- The **Housing ACT Information Line** which provides information on ACT public housing enquiries.
  - PH: 6207 1150

www.dhcs.act.gov.au/hcs

ACT STANDARD TENANCY TERMS - PLAIN LANGUAGE VERSION

The aim of this plain language version is to make the Standard Tenancy Terms used in Canberra more accessible. As far as possible legal language and phrasing has been replaced with plain language. This version is not a full version. Where it helps to understand the Terms, additional information is provided. Each section is grouped against the clauses of the standard tenancy terms. This guide is not a substitute for legal advice. If you are involved in a dispute you should refer to the official version and seek legal advice. The official version of the Standard Tenancy Terms can be found here.

INTRODUCTION (CLAUSES 1-5)

You (the tenant) and a landlord can agree to add to these standard terms but any changes must be consistent with the standard terms and must not change them. Any other changes have to be approved by the Administrative and Civil Appeals Tribunal (RTA s. 10) to be binding.

These terms are binding on you and the landlord during the tenancy.

There are two types of tenancies: **fixed term tenancies** and **periodic tenancies**. A fixed term tenancy lasts from a single agreed start date to a single agreed end date. When a fixed tenancy ends it may become a periodic tenancy (see STTs clauses 4 to 5).

A tenancy is a periodic tenancy if it doesn't have an agreed end date.

COSTS, 'SET UP' AND INFORMATION (CLAUSES 6-13, 98)

The landlord pays the costs of preparing this agreement. You pay for your legal costs.

Before the tenancy starts, the landlord must give you a copy of the proposed agreement. The landlord must give you reasonable time to think about the agreement before you sign it. (s 12(1) RTA).

The landlord must give you their full name and contact address (s 12(3) RTA). An agent must give you their full name. If the agent is a company, they must give you the name of the contact person for the tenancy. You must give the landlord your full name (s 13 RTA).

Before the tenancy starts the agent or landlord must give you or tell you how to obtain 'The Renting Book' published by the Office of Fair Trading. The booklet is a guide on your rights and responsibilities as a tenant.

When the tenancy starts you and the landlord have to give each other an address where notices under this agreement can be sent. You have to let each other know if this changes.

BOND (CLAUSES 14-20)

You only have to pay a bond if the landlord asks for it. There can only be one bond for a tenancy. The maximum bond allowed is 4 weeks rent.

The bond must be lodged (paid to) the Office of Regulatory Services (Rental Bonds). Either you or the landlord can lodge the bond. Whoever lodges the bond must fill in the bond lodgement form and both you and the landlord must sign it.

If you pay the bond to the landlord/agent, the landlord/agent must give you a receipt for the bond and the landlord must lodge the bond within 2 weeks (or 4 weeks for an agent).

If you lodge the bond with the rental bond board, the landlord must give you the keys and access to the premises as soon as you provide a copy of the lodgement receipt.

CONDITION REPORT (CLAUSE 21)

The landlord must give you 2 copies of a completed condition report within one day of you moving in. You must look at the report and mark whether you agree or disagree with the report. You must return one signed copy of the report to the landlord within 2 weeks. The landlord must keep the condition report for at least a year after the tenancy ends.

This is an example of a condition report:

http://www.tenantsact.org.au/LiteratureRetrieve.aspx?ID=83752&A=SearchResult&SearchID=33945332&ObjectID=83752&ObjectType=6.

CONDITION AT THE START OF THE TENANCY (CLAUSE 54)

At the start of the tenancy the landlord must make sure that the premises (and anything leased with the premises) are:

- fit to live in;
- reasonably clean;
- in a reasonable state of repair; and

- reasonably secure.

PAYING RENT (CLAUSES 24-33)

The landlord cannot ask you to pay for anything other than rent and bond for starting, ending, transferring or extending the tenancy, or for giving you a key or for providing information.

It is illegal for the landlord to ask you for a deposit to hold the premises for you. (RTA s. 18).

You must pay the rent on time. You must not use the bond to pay rent at the end of the tenancy.

The landlord cannot ask you to pay the rent more than one month in advance. The landlord cannot ask you for a cheque with a future date on it to pay for future rent.

The landlord or agent must give you a receipt on the same day for rent you pay in person. Otherwise a receipt must be sent to you within a week. A receipt does not have to be sent if you pay the rent directly into the landlord or agent's bank account.

A receipt must include:

- how much was paid,
- when it was paid,
- the period covered by the payment,
- what property the payment is for; and
- whether the payment is for bond or rent.

If this information is not included, the landlord must provide it, within 4 weeks of you asking for it. The landlord must keep all records of rent payments for at least 12 months after the tenancy ends.

RENT INCREASES (CLAUSES 34 – 41)

Rent cannot be increased during a fixed tenancy unless the agreement says so. (RTA s. 64A)

The landlord cannot increase the rent more than once a year unless all the tenants have changed since the last rent increase.

The landlord must give you 8 weeks written notice of: any rent increase, how much the rent will increase, and when it will increase.

You can ask ACAT to review of an excessive rent increase. Usually an application should be made at least 2 weeks before the rent is to increase. (RTA s. 65) Usually, a rent increase will be excessive if it is more than 20% above general rent inflation in Canberra. A tenant can try to persuade ACAT that a rent increase less than this is excessive (RTA s.68) If you apply to ACAT to review a rent increase, the increase cannot take effect until a decision is made by ACAT.

You can leave the premises before the rent increase takes effect by giving 3 weeks' notice to the landlord.

A rental increase calculator provided by the Tenants Union ACT is available at this link.

WHAT THE LANDLORD MUST PAY FOR (CLAUSE 42-46)

The landlord must pay for:

- rates and taxes on the property;
- services which the landlord has agreed to pay;
- services for which there is not a separate metering device;
- all services until the start of the tenancy;
- all services after the final reading or measurement at the end of the tenancy
- installing water, electricity, gas and telephone lines
- the annual supply charge for water and sewerage
- all body corporate fees if the premises are a unit
- the landlord must pay for services not in the tenants name after the end of the tenancy if the landlord doesn't get the meters services read at the end of the tenancy.

The landlord must organise the reading and measurement of all services not in your name. The landlord must allow you to check these readings/measurements.

WHAT YOU MUST PAY FOR (CLAUSES 45-46)

You must pay for:

- the connection of any services that are in your name
- all costs for use of electricity, gas, water and telephone
- If you leave the tenancy without giving notice the landlord must arrange for the reading of services in a reasonable time of knowing you have left and you are responsible for the paying for those read services.

You don't have to connect or continue a telephone service.

YOUR RIGHT TO PEACE AND QUIET AND EXCLUSIVE USE (CLAUSES 51-53)

The landlord guarantees that is legal for you to live in the premises.

The landlord must not interfere with your reasonable peace, comfort or privacy. The landlord must not allow your peace and quiet to be interfered with.

During the tenancy, the tenants have the only right to live in the premises (unless otherwise agreed in writing).

CHANGING THE LOCK (CLAUSE 54)

The landlord or tenant (at their own cost) may change the locks in an emergency or if the other party agrees. A key to the new lock must be given to the other party immediately.

LANDLORD REPAIRS (CLAUSES 54-62)

The landlord must keep the property in a reasonable state of repair.

You must tell the landlord of any need for repairs. This does not include repairs such as changing a light globe or a fuse, which you are expected to do.

The landlord must complete the repair within 4 weeks of you asking.

The landlord does not have to repair any damage you cause carelessly or deliberately.

If the property is a unit the landlord must ensure that repairs to the common property are undertaken as quickly as possible by the body corporate.

You must notify the landlord as soon as you can of any urgent repairs and those repairs must be made as soon as needed, depending on the nature of the problem.

The following are urgent repairs:

- A burst water service;
- A blocked or broken toilet system;
- A serious roof leak;
- A gas leak;
- A dangerous electrical fault;
- Flooding or serious flood damage;
- Serious fire or storm damage;
- A failure of gas, electricity or water supply to the property;
- The failure of a fridge the landlord supplied with the property;
- A failure or breakdown of any service on the property essential for hot water, cooking, heating or laundering;
- A fault or damage that causes the property to be unsafe or insecure;
- A fault or damage likely to cause injury to person or property; and
- A serious fault in any door, staircase, lift or other common area that restricts the tenant's ability to access the property.

In certain circumstances the tenant may be able to authorise urgent repairs if the cost of the repairs is less than 5% of the value of a year's rent.

If you organise the repairs, they must be undertaken by the landlord's nominated tradesman or if they are not available another qualified tradesman you choose. The tradesman may bill the landlord directly. If you don't follow this procedure you have to pay the costs of the repair.

TAKING CARE OF THE PREMISES (CLAUSE 63)

You must not carelessly or deliberately damage the property or allow someone else to damage the property. You must tell the landlord about any damage as soon you can.

You must look after the property and keep it clean taking into account its condition when you moved in and ordinary use.

CONDITION OF THE PREMISES AT THE END OF THE TENANCY (CLAUSES 64-65)

At the end of the tenancy you must leave the premises:

- as clean as it was at the start of the tenancy; and
- In the same condition as it was at the start of the tenancy, except for 'fair wear and tear'. (Fair wear and tear is the kind of damage that is caused over time by ordinary day to day use of the property).

The landlord must not ask you to make changes, improvements or renovations to the property.

NO CHANGES, ADDITIONS, ATTACHMENTS OR INSTALMENTS (CLAUSES 67 – 68)

You cannot make any changes or additions to the property without the landlord's written permission.

You cannot attach or install anything in the premises without the landlord's permission, which the landlord must not unreasonably refuse. You must pay for any damage caused by something you have attached or installed.

If you don't remove them at the end of the tenancy, anything you have installed or attached to the premises becomes the property of the landlord.

WHAT YOU CAN AND CAN'T DO WITH THE PREMISES (CLAUSES 69-72)

You must only use the premises to live in unless the landlord has agreed in writing to other uses.

You cannot use or let the property be used for anything illegal. You must not cause a disturbance or interference to neighbours.

You must tell the landlord if you are going to leave the premises empty for more than 3 weeks.

Unless you have the landlord's permission in writing:

- you cannot lease the premises (or any part of it) to someone else; and

- you cannot transfer this tenancy agreement or any part of it to someone else.

Any agreement you enter into with someone else that pretends to do these things does not create any rights for that other person.

RESPONSIBILITY FOR VISITORS AND GUESTS (CLAUSE 73)

If someone is on the property with your permission you are responsible if they break this agreement, as if they were a tenant too.

You are not responsible for the conduct of a person who is on the premises at the request of the landlord or because they are helping the landlord.

You are not responsible for the actions of individuals who do not have your permission to be on the premises.

LANDLORD'S ACCESS TO THE PREMISES (CLAUSES 75-82)

The landlord cannot demand access the property during the tenancy unless this agreement or the law allows.

You can agree to allow the landlord to access the property.

If you ask, the landlord (or their agent) must produce their identification.

Unless the landlord is carrying out urgent repairs or you have agreed, the landlord cannot enter the premises on Sundays, public holidays or before 8am and after 6pm.

The landlord is allowed to inspect the property twice a year. Also, the landlord can make an inspection in the first month of the tenancy and in its last month.

The landlord must give you a week's written notice of an inspection.

Any inspection has to be at a time that suits you and the landlord. If you can't agree on a time a landlord can take the issue to ACAT.

Within the last 3 weeks of the tenancy, on the landlord giving 24 hours' notice, the tenant must allow reasonable access to the property for prospective tenants.

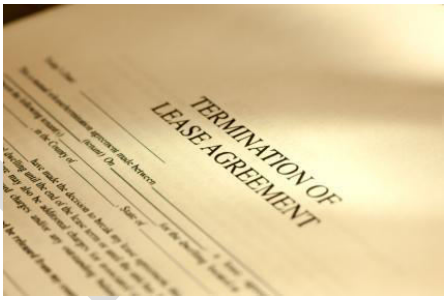
If the landlord intends to sell the property and has let you know in writing in advance, you must also give reasonable access to the property, on the landlord giving 24 hours' notice, to allow inspection by possible buyers of the property.

If the landlord provides the tenant with a weeks' notice (or as you agree) the landlord can access the property at a reasonable time for repair.

If the repairs are urgent, the landlord must give you reasonable notice before entering the property, and entry must be at a reasonable time.

ENDING THE TENANCY (CLAUSES 83-87)

Sending notices to end the tenancy



The landlord can send you a written letter called a "notice to vacate". The notice has to contain the following details

- The address of the property;
- detailed reasons why the landlord is claiming a right to tell you to leave;
- the day on which the landlord wants you to leave which has to be at the end of the required notice period
- say that the tenancy ends on the day you leave

You can send the landlord a written letter call a 'notice of intention to vacate' with similar information, including the day when you plan to leave, and the tenancy ends if you leave on that day.

The landlord can:

- accept your notice; or
- ask ACAT to confirm the tenancy agreement, to get compensation, or both.

Premises no longer livable or available to live in

Either the landlord or you can end the tenancy by sending a notice to end the tenancy:

- because the premises are so damaged that they are not suitable to live in
- because the premises won't be available because of any government action within 4 weeks

If it is the landlord giving the above notice, it must be at least a week before the tenancy ends. The rent stops on the date the property can't be lived in. You can end the tenancy by giving 2 days' notice, in this situation.

If no one gives a notice you don't have to pay for rent when the property can't be lived in but you have to start paying rent again when the property can be lived in again.

THE TENANT ENDING THE TENANCY (CLAUSES 88-91)

Ending a period tenancy: You can end a periodic tenancy by giving more than 3 week's notice to the landlord of when you intend to leave. The tenancy ends on the day in the notice.

Ending a fixed tenancy: You can end a fixed term tenancy on or after the end date of the fixed term by giving 3 weeks notice. The tenancy ends on the day in the notice.

If the landlord breaks the agreement you can either:

- ask ACAT to end the tenancy
- or give the landlord written notice that you intend to end the tenancy because the landlord has broken the agreement.

If you give a notice you have to give the landlord 2 weeks fix the problem, if it can be fixed. If the landlord fixes the problem before the end of the notice period the tenancy doesn't end.

If the landlord doesn't fix the problem, or it can't be fixed you then have to give 2 weeks notice of when you will leave. The tenancy ends on the day in the notice and rent must be paid to that date.

If the landlord fixes the problem during this second notice period you can either take back your notice and stay in the tenancy or end the tenancy at the end of the notice period by leaving on that date.

THE LANDLORD ENDING THE TENANCY (CLAUSES 92-97)

For not paying the rent on time (clause 92)

The landlord can ask ACAT to end the tenancy and evict you if:

- you haven't paid rent for a week; and
- The landlord has sent you a notice to pay because you haven't paid rent for a week and has given you 7 days to pay the outstanding rent (if you pay within 7 days the landlord can't take further action); and
- The landlord has sent you the notice to pay, you haven't paid and the landlord has sent you another notice to leave the premises within 14 day; and
- The 14 days have ended.

If the landlord has had to give you a notice to pay twice before, the landlord only has to give you 7 days' notice to end the tenancy.

If you break the agreement (clause 93)

If you do something else that breaks the agreement:

- The landlord has given you 2 weeks' notice to fix the problem, if it can be fixed;
- If the problem is not fixed 2 weeks after you get the notice or it can't be fixed, the landlord must give you 2 weeks' notice to leave the premises
- If you haven't left by then the landlord can ask ACAT to end the tenancy and evict you

If you haven't broken the agreement (clauses 94-95)

If you haven't broken the agreement the landlord can end the tenancy by giving you 26 weeks' notice (but not before a fixed term ends).

You can leave any time in the two weeks before the end of the notice period, as long as you give the landlord 4 days notice. The tenancy ends on the day you leave.

If the tenancy is a periodic tenancy (clause 96-97)

The landlord can end a periodic tenancy with a shorter notice period if:

- The landlord or a close relative of the landlord or a person who the landlord has an obligation to care for is intending to live in the premises (4 weeks)
- The landlord intends to sell the property (8 weeks)
- The landlord intends to rebuild or renovate (12 weeks)

You can leave any time in the two weeks before the end of the notice period, as long as you give the landlord 4 days notice. The tenancy ends on the day you leave.

FORWARDING ADDRESS (clause 98)

When you leave the tenancy you have to give the landlord your forwarding address.

NOTICES OF ADDRESS FOR SERVICE (CLAUSES 98-99)

At the beginning of the tenancy the tenant and landlord must provide each other with an address for service of notices.

A party must advise the other party of a change of address for service within 2 weeks of the change.

At the end of the tenancy the tenant must provide the landlord with a forwarding address.

JOINT TENANCY (CLAUSE 100)

If there are two or more of you as tenants you share the rights and obligations of the tenancy. You are responsible as a group and individually.