

Reshaping Public Housing: its impact on tenants' legal rights and responsibilities

Chris Martin

Policy Officer, Tenants Union of NSW
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Residential tenancies law - some background

- Residential Tenancies Act 1987 (NSW)
- Mild consumer protection + quick enforcement
- Slow pace of reform - except in relation to social housing

RPH: the new fixed term agreements

- Previously...
 - PH agreements continued indefinitely
 - 2002-2005: fixed terms reviewed as to 'conduct', then continued indefinitely
- RPH fixed terms:
 - 2, 5 or 10 years
 - Reviewed as to income eligibility, then another fixed term

RPH: the new fixed term agreements

- Special provisions for review and termination: new s 63B-E
- Review, notice, review, notice
- Tribunal must terminate

RPH: the new fixed term agreements

- But aren't fixed terms a good thing?
 - Protect against rent increases (s 45(4))
- Special provisions for rent increases: new s 132(4), exempt from s 45(4)
- Special provision: RT Reg 2006, cl 21(2), exempt from s 47 (excessive rent increases)
- Special provision: new s 47A (excessive rents)

RPH: the new fixed term agreements

- But aren't fixed terms a good thing?
 - Protection against termination
- Special provisions for termination: new s 63F-H
 - Alternative premises
 - Notice, review, notice
 - Tribunal must terminate, not consider reasons

RPH:water charges

- Water charges under the RT Act:
 - RT Act: tenant pays for 'excess water'
 - RT Reg, additional term: tenant pays for water according to metered amount consumed
- Only about half public housing metered

RPH: water charges

- Special provisions for social housing: new s 19A
 - Water charge per Ministerial guidelines
 - Charge related to rebated rent (hence income) not use

RPH: other changes to the Residential Tenancies Act

- Special provisions for old debts: new s 19B
 - ‘enter into arrangements with the landlord, in accordance with any reasonable request of the landlord, for the payment of that debt’
- Special provision for new fixed terms: new s 14A
 - HNSW may ‘declare’ that an agreement is subject to a further fixed term

RPH: other changes to the Residential Tenancies Act

- Special provision for new terms in old agreements: new s 9A
 - ‘...if, based on new circumstances or events, a refinement of what constitutes anti-social behaviour by tenants was required... we may need to amend all agreements.’ (Min Burton, 2R speech)

RPH: 'tenant fraud'

- Housing Amendment (Tenant Fraud) Act 2008
- New investigative powers: access to registers (new s 69B)
- New offence: failure to notify change of circumstance (new s 69A)
- New powers for recovery of monies: from occupants (new s 79A), charge on land (new s 79B)

RPH: 'tenant fraud'

- New penalties: three months imprisonment/\$2200 fine
- New prosecutorial role for Housing NSW
- Amnesty
 - Protects against criminal prosecution
 - Protects against recovery of monies
 - No protection against termination?

RPH: Consumer, Trader and Tenancy Tribunal

- CTTT (Amendment) Bill 2008
 - ‘Social Housing Division’
- No extension of jurisdiction, no special powers
- Are the rules so different?