

ISSUES PAPER:
DEVELOPMENT OF A
CENTRAL BOND HOLDING
SCHEME
IN THE NORTHERN
TERRITORY

UNDER THE *RESIDENTIAL
TENANCIES ACT* (NT)



CONSULTATION COMMENTS

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Your ref: 20142163; PDC15/2971

29 May 2015

Ms Jenni Daniel-Yee
Acting Director, Legal Policy
Department of the Attorney-General & Justice
GPO Box 1722
Darwin NT 0801

By email: Policy.AGD@nt.gov.au

Dear Ms Daniel-Yee,

Re: ISSUES PAPER ON THE DEVELOPMENT OF A CENTRAL BOND HOLDING SCHEME IN THE NORTHERN TERRITORY UNDER THE RESIDENTIAL TENANCIES ACT (NT)

Thank you for the opportunity to comment on the Issues Paper on the Development of a Central Bond Holding Scheme in the Northern Territory under the *Residential Tenancies Act* (NT) ('the Issues Paper').

Darwin Community Legal Service Incorporated ('DCLS') is a not for profit organisation that provides free legal advice and advocacy services throughout the Northern Territory ('NT'). DCLS is committed to improving access to justice and increasing community understanding of the law. DCLS has a specialist Tenants' Advice Service ('TAS'), which serves to assist any person who pays rent for residential premises in the NT. TAS advocates on behalf of tenants to improve tenancy legislation and Department of Housing policies to ensure balance between the rights and responsibilities of tenants and landlords.

We support the proposal for the establishment of a Northern Territory Centralised Residential Tenancy Bond Authority ('Bond Authority') and the retention of any accrued interest from the Bond Authority to fund dispute resolution services and organisations engaging in public education programs, including the development of resources.

We note that this submission has been reviewed and endorsed by the following NT and interstate community legal and social services/organisations:

- Central Australian Womens Legal Service Inc;
- Katherine Women's Information and Legal Service;
- Northern Territory Legal Aid Commission;
- Northern Territory Young Lawyers;
- NT Shelter;
- Tenants' Union ACT;
- Tenants' Union of Tasmania;
- Tenants Union of Victoria; and
- Top End Women's Legal Service Inc.

In addition, a copy of the 28 May 2015 Tenants' Union of Tasmania endorsement addressed to the Department of the Attorney-General & Justice is annexed with this submission.

1. 2010 Submissions to RTA Issues Paper

On 1 June 2010, we made submissions in response to the 2010 Department of Justice Issues Paper with regard to the *Residential Tenancies Act* (NT) ('RTA').

In the 2010 submissions, we recommended that a Bond Authority be established in the NT to collect, administer and disburse security deposits ('bond'). In their joint response to the 2010 Department of Justice Issues Paper, the Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Justice Agency also recommended that a Bond Authority be established.¹

In addition, we submitted that the term 'security deposit' as it appears in the RTA be replaced with the term 'bond' so as to bring the RTA in line with other Australian jurisdictions.² We noted that the replacement of the term would also serve to eliminate any confusion in the reading of the RTA where both 'security deposit' and 'bond' appear interchangeably.³

Bond related issues were common in tenancies at the time of the 2010 submission and continue to be so as at the date of this consultation paper.

We reaffirm our 2010 submissions in this regard. In addition, we make the below submissions.

¹ Central Australian Aboriginal Legal Aid Service Inc and North Australian Aboriginal Justice

² *Residential Tenancies Act 2010* (NSW) s 3; *Residential Tenancies Act 1997* (VIC) s 3; *Residential Tenancies and Rooming Accommodation Act 2008* (QLD) s 111; *Residential Tenancies Act 1995* (SA) s 3; *Residential Tenancies Act 1987* (WA) s 3; *Residential Tenancies Act 1997* (ACT) Dictionary.

³ *Residential Tenancies Act* (NT) ss 4, 29 and 33.

2. Key Bond Related Issues

Since TAS has been established, we have experienced a high volume of bond related issues faced by tenants in the NT. These include, but are not limited to:

- 2.1 the amount of bond demanded being above the legal limit provided under section 29(1)(b) of the RTA;
- 2.2 the mixing of the bond with personal monies of a private landlord in breach of section 29(3) of the RTA;
- 2.3 landlords or agents not returning any unclaimed portion of the bond within seven business days of receiving back the premises in breach of section 112(2) of the RTA;
- 2.4 the possibility of a landlord spending the bond and subsequently relocating outside the NT jurisdiction, making it harder to seek recovery; and
- 2.5 complexities caused by a landlord selling an investment property mid-way during a tenancy and not passing the bond to the new owner.

Under the RTA, bond is required to be kept in an account either held by a real estate agent, an authorised deposit-taking institution or a statutory corporation of the Territory or Commonwealth.⁴ Interest on the bond goes to the real estate agency if it is in their account. Otherwise, the accrued interest is to be distributed in accordance with any provision under the tenancy agreement. If the tenancy agreement is silent to this effect, the interest on the bond is to be distributed to the party who, at the end of the tenancy, is entitled to receive the greater share of the bond.⁵

In practice, bond and the accrued interest are not always treated as per the legal requirements provided under the RTA. This is particularly so with private landlords who self-manage their rental property. In many instances, the bond is either misappropriated or spent illegally during the tenancy, along with any accrued interest.

In the NT, tenants on average pay \$2,500 - \$3,000 in bond at the commencement of their tenancy.⁶ This is a considerable amount of money for most tenants. Relocating to another premises is an expensive exercise, which includes, amongst other things, cost of transfer of furniture and chattels, loss of income and the payment of bond

⁴ *Residential Tenancies Act* (NT) s 29(4).

⁵ *Residential Tenancies Act* (NT) s 114.

⁶ The Department of Treasury and Finance, NT, provide a valuable compilation of the average weekly rent for houses and units in Darwin and surrounding suburbs, last updated in March 2014 <<http://www.treasury.nt.gov.au/Careers/GraduateCareers/Pages/What-is-Darwin-really-like.aspx>>. Similar median property rental prices for both houses and units, last updated on 20 April 2015, is published on <<https://www.realestate.com.au/neighbourhoods/darwin-0800-nt>>, and <http://www.sqmresearch.com.au/graph_median_rent_weeks.php?region=nt%3A%3ADarwin&type=c&t=1>, with the data last updated on 20 May 2015.

together with rent in advance. Any delay in the return of bond from a previous tenancy is likely to have major financial impacts on tenants who do not have sufficient savings to draw upon for their next tenancy or undertaking of mortgage repayments.

In our experience, tenants in the Northern Territory believe their respective landlords or agents hold an inequitable balance of power with regard to the retention and disbursement of bonds. Fear of reprisal or being blacklisted via tenancy databases such as TICA prevents numerous tenants from asserting their rights through the legal system.

3. Benefits of a Bond Authority

We consider that the benefits of establishing a Bond Authority in the NT far outweigh any perceived disadvantages. Legislating for the establishment of a Bond Authority is the best option in the prevention of high volumes of bond related issues faced by tenants in the NT.

As noted in the Issues Paper, the NT remains the only Australian jurisdiction without a Bond Authority or similar organisation / body. In legislating for the establishment of a Bond Authority, the NT will be creating a system proven to be effective in other jurisdictions.

3.1 Trust and Confidence in the Legal System

The establishment of a Bond Authority will create a government-controlled repository that consolidates all bond monies in the NT. Centralisation of this function will promote efficiency, legislative compliance and accountability. The establishment of a Bond Authority will give rise to a structured, equitable and transparent system addressing the key bond related issues that tenants continue to suffer in the NT. Overall, this would promote greater public trust and confidence in the legal system.

3.2 Accountability of Accrued Interest

A Bond Authority will permit accountability for all interest accrued on bonds, which is predominately unaccounted for under the current system. This accrued bond interest may then be utilised to fund the management operations of the Bond Authority, as well as to fund dispute resolution services and organisations that provide tenancy legal advice, advocacy and support to tenants. Further, the accrued interest will allow these organisations to promote greater community awareness of legal rights and responsibilities through increased community legal education and resources.

3.3 Transfer of Ownership

The establishment of a Bond Authority will also avert problems associated with a rental property being sold during a tenancy and the bond not being passed on to

the new buyer. The independent holding of the bond will prevent it from being lost to a departing landlord and the problems associated with its recovery.

In addition to the establishment of a Bond Authority, we recommend that a provision similar to that of section 424 of the *Residential Tenancies Act 1997* (VIC) be legislated for in the NT. In legislating for a similar provision, a landlord would be required to notify both the Bond Authority and relevant tenant/s of the transfer of ownership of the property.

4. Recommendations

- 4.1 We recommend Option 4, Part 6.4, of the Issues Paper be implemented in order to establish a Bond Authority in the NT.
- 4.2 We recommend amending the RTA to establish a Bond Authority and to provide for the interest generated from retention of all bonds in the NT to go towards, *inter alia*, the funding of Bond Authority management operations, funding dispute resolution services and funding organisations that provide tenancy legal advice, advocacy and support.
- 4.3 We recommend amending the RTA to add a provision similar to section 424 of the *Residential Tenancies Act 1997* (VIC).
- 4.4 We recommend amending the RTA to replace the term 'security deposit' with 'bond', bringing it in line with other jurisdictions and eliminating any confusion with regard to interchangeable referencing within the RTA.

We look forward to an opportunity to be further consulted on this matter. Should you have any queries with regard to the above, please contact our TAS team on (08) 8982 1111.

Yours sincerely,



Abhishek Jain
Solicitor and TAS Team Leader
Darwin Community Legal Service Inc.

Annexed: Tenants' Union of Tasmania's letter to the Department of Attorney-General & Justice, dated 28 May 2015.



28 May 2015

Ms Jenni Daniel-Yee
Director, Legal Policy
Department of the Attorney-General & Justice
GPO Box 1722
Darwin NT 0801

Dear Ms Daniel-Yee

Re: The Introduction of a Northern Territory Central Bond Holding Scheme

The Tenants' Union of Tasmania Inc. (TUT) is an incorporated not-for-profit community based organisation representing residential tenants in Tasmania. We have been advocating and representing tenants for more than thirty years and over that time have seen firsthand the change as a result of moving from a system in which bonds were held by landlords and disputes resolved through the Magistrates Court of Tasmania to our current system in which all bonds are held by the Rental Deposit Authority and disputes resolved through a Residential Tenancy Commissioner.

In our experience the move to a Rental Deposit Authority (RDA) in 2009 has proved to be a success, providing an independent dispute resolution process and allowing for a fairer, more transparent and cost effective service.

Whilst we strongly support the introduction of a Northern Territory Central Bond Holding Scheme and endorse the submission of the Darwin Community Legal Service we would emphasise that any change must be accompanied by appropriate funding. In Tasmania, staffing shortages have at times meant that Residential Tenancy Commissioner decisions have not been processed as quickly as they otherwise should have. We therefore support the retaining of accrued interest from the scheme to fund dispute resolution services and organisations engaging in public education programs.

We would also strongly support the introduction of an education and awareness raising campaign around the introduction of a Northern Territory Central Bond Holding Scheme. Whilst we are confident that most bonds are now held by the Rental Deposit Authority, we would stress that it has taken more than five years of education of the Tasmanian community to reach current levels.

Finally, we would like to point out that in Tasmania our public housing body (Housing Tasmania) does not charge its approximately 10,000 tenants bond. In our opinion this model should be considered in the Northern Territory. Tenants in public housing are generally not in a position to pay bond and efforts to introduce payment plans to pay off the bond have proved unworkable with the Rental Deposit Authority.

If we can be of any further assistance please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Barton', written in a cursive style.

Meredith Barton
Principal Solicitor
Tenants' Union of Tasmania
