

13 November 2019

Mr Tony Sievers

Chairperson

Economic Policy Scrutiny Committee

Legislative Assembly of the Northern Territory

Via email

Dear Mr Sievers

**Submission to the Economic Policy Scrutiny Committee Inquiry into the
*Residential Tenancies Legislation Amendment Bill 2019***

United Workers Union (formerly United Voice) endorses the submission to the Economic Policy Scrutiny Committee by Darwin Community Legal Services.

We also attach our submission tabled to the Attorney General Director on 25 August 2019.

We urge the Committee to use this opportunity to have real reform within residential tenancy for Territorians.

If you require further information, please do not hesitate to contact me on 08 8924 4702.

Yours Sincerely



Erina Early

Territory Secretary - NT

United Workers Union



BIGGER, STRONGER, UNITED.

TIM KENNEDY SECRETARY
JO SCHOFIELD PRESIDENT

DISCUSSION PAPER

REVIEW OF THE *RESIDENTIAL TENANCIES ACT 1999*

**UNITED VOICE NORTHERN
TERRITORY**

SUBMISSIONS

Foreword

About United Voice

United Voice is a union of 120,000 workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members include workers in industries like aged care, health care, fire fighters, paramedics, Aboriginal Health, Aboriginal Organisations, Local Government, Regional Councils, mining, early childhood education, cleaning, hospitality, security, corrections, public and private hospitals. United Voice NT has around 3,000 members and is the Northern Territory's oldest and largest union. United Voice NT represents some of the most vulnerable workers in the Territory and half of our membership is currently renters as defined under the *Residential Tenancies Act* (NT) and have or are renters' long term, short term and through their employment.

Introduction

United Voice welcomes the opportunity to make a submission on potential future amendments to the *Residential Tenancies Act* (NT) ('RTA').

The idea that renters can move from one rental residence to another gives the illusion of having freedom under the current RTA. This is the same relationship as the Lord and the Serf.

The illusion of the contract gives it an ideological façade which makes it appear as two equals signing a contract on equal terms. This is not the real fundamental relationship. The real fundamental relationship under the current RTA is one of cohesion.

The relationship of the Lord and the Serf is one of overt cohesion. The current RTA is based on economic cohesion. The ideological obscures the economic cohesion which is fundamental basis of the landlord/tenant relationship.

Submissions to Discussion Paper: Review of the Residential Tenancies Act (NT)

We wish to make submissions on the following issues outlined in this discussion paper.

Issue 10: Termination (Employment Related Tenancies)

s91 Notice Periods

It is a concern of United Voice and many of its members, who work in all corners of the Territory, the current provisions around termination of employment related tenancies. Under s91 of the RTA a landlord, who is the Employer, may provide notice to the tenant, employee, to terminate a tenancy that was entered into as a condition or benefit of employment (an employment related tenancy).

The concern is in relation to the period of notice provided for the situation under s91 (2) (a). A minimum of 2 days' notice for the tenant/employee to vacate is inherently inadequate and unfair and the suggestion in the discussion paper that employer termination periods provided a fair balance between employee and former employer is strongly disagreed with.

We have come across multiple examples of employees, often working in remote areas for Local Government or other services, provided notice to terminate with 2 days' notice. Invariably this occurs on a Friday afternoon, leaving them almost no time to pack up their lives and find alternate accommodation from their remote setting. 2 days' notice (especially if notified on a Friday afternoon) leaves them no time to explore any legal recourse to dispute. Whilst it is possible for an employee to stay on beyond the date specified in the notice of termination¹ it may not be tenable to do so and they risk financial and legal consequences, we have heard of instances where Police have been called or threatened to be called.

The employee may have a support network elsewhere they can return to however sometimes the remote area is their home and they find themselves homeless in an area where there is no private rental market to turn to for alternate accommodation. In remote areas of the Northern Territory depending on season and weather conditions there may actually be no possibility of leaving the area in such a short timeframe. There have also been instances where the employer has attempted to claim financial penalties or seek rent for a further period despite them issuing 2 days' notice to vacate.

The primary justification for employers on the need to terminate a tenancy and seek vacant possession so quickly is because they require the accommodation for a

¹ Residential Tenancies Act (NT) s104.

replacement employee to take over that position- suggesting it would be somebody moving to the area without existing accommodation. However, suggesting that employer's need these properties so quickly to accommodate new employees is inherently improbable. It is unlikely a replacement is on standby who would be able to start within days of another person vacating but rather it would be necessary for employer's to go through a recruitment process and have someone relocate to the area- a process that could take some time. Even in the circumstances a replacement employer is available at relatively short notice 2 or 3 days is still an unrealistic timeframe and in such a case an Employer could use their resources for an alternative, if only short-term, arrangement.

Another justification is that the employee may be a 'trouble' employee that they need to remove quickly however it is submitted their presence in the workplace compared with at their own residence are vastly different matters and employer's re-taking possession of housing stock in these situations does not outweigh the detriment to an employee to lose both their job and home within a matter of days.

Further although s91 (3) states s91 has effect subject to the *Workplace Relations Act 1996* it does not recognise the intricacies associated with concurrent employment law disputes that might be occurring. We have seen instances of landlords relying solely on the wording of section 91 to evict workers when what they are purporting is strongly disputed and the tenant/worker has rights under Fair Work legislation that is being overlooked (i.e- unfair dismissal). The existing Act makes little provision for employee/tenants in this situation.

Proposed Reforms

We advocate for the following 3 amendments to apply to agreement that fall within the scope of section 91(1);

- The timeframe for notice under s 91(2)(a) is extended to a minimum 14 days' notice;
- The timeframe under section 91(2) is extended from 14 days to 1 month, similar to the notice provided in the Queensland jurisdiction² or longer if a period of notice of termination is specified in an employment agreement- but an employment agreement be prohibited from specifying less than 1 months' notice.
- That there is provision for the employee/tenant to challenge the validity of a notice of termination issued by an employer/landlord under s91 at NTCAT, including for situations there is a concurrent workplace relations dispute.

² *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 374.

We note the existing RTA section 84 that a person may apply to NTCAT for a declaration that a notice of termination is of no effect. This is certainly not practically possible to do though if an employee has been given only 2 days notice to vacate (especially if that notice is provided on a Friday afternoon) and such application is also unlikely to be heard by NTCAT within 14 days. (also see below argument re Issue 21 which also informs this discussion).

Practical outcome of proposed reforms

If the employee does find suitable alternate accommodation within these extended notice periods or they are happy to leave the premises earlier then a tenant is free to leave prior to the expiration of the notice period without financial liability. It is submitted this will create the fairest balance for both parties because it allows a tenant sufficient time to make arrangements and if they are content to leave early the employer/landlord will be satisfied as it gives them quicker access to their housing stock.

Employee Resignation

We are of the view that employee resignation would fall within the reference to “in any other case” under s91 (2) (b). However see no issue in clarifying the section to ensure an employer can terminate a tenancy where an employee resigns with the notice period to be the longest of the notice period as per the resignation or the same period as provided by s91 (2) (b), though we do submit a longer notice period from the current 14 days is required under that section (as outlined above).

Remedy of breach

We support the recommendation that the word ‘reasonable’ be added to s96B.

Issue 21: Period to Vacate

Section 105 allows NTCAT the discretion to suspend the operation of orders for vacant possession for up to 90 days after taking into account various factors.

NTCAT’s discretion for hardship does not seem to include reference to potential appeals or applications to stay orders for vacant possession. However, its purpose is to acknowledge there are times where it may not be appropriate for the tenant to handover possession immediately. It is submitted such an occasion, where the existing timeframes for possession prevents a tenant from lodging or seeking advice regarding an appeal, falls within the category.

A person faced with an order for termination is in their most vulnerable position and as has been submitted by other agencies the 5 day timeframes offered in the Act are insufficient to obtain legal advice and advance an application to NTCAT at the same time as having to deal with an impending eviction. The period specified in s100A (3)

and s1004 (3) should be extended to the minimum notice period of termination subject to a further discretionary suspension of that order under section 105.

For similar reasons as discussed in the submission relating to employment related tenancies having such little time before been required to vacate premises makes it impractical for a person to realistically be able to appeal or seek a stay on an order when they might otherwise have cause to.

If a person has lodged an appeal regarding a decision to terminate their tenancy it is submitted that is a situation in which NTCAT should grant an automatic stay, on the papers, until the determination of the hearing. Because if there is no stay and they are required to legally vacate before the hearing has occurred it makes the entire appeal process futile.

In summary the 5 day requirement to deliver up vacant possession should be extended to at least the minimum notice period for termination and there should be more opportunity to enliven s105 to further suspend orders for possession for up to 90 days if a tenant has indicated a possible appeal.

Issue 15: The need to implement an Independent Bond Board

There has been considerable discussion in recent years about whether to introduce an 'independent bond holding authority' or bond board in the NT, which remains the only jurisdiction in Australia not to have one

It is submitted that the Northern Territory suffers as a result of remaining the only jurisdiction without a bond board. The arguments in favour of an independent bond board are simple. Firstly tenants, including our members who have experienced disputes in claiming their bond, would with its implementation would automatically receive the return of their bond within days unless a valid and evidence based claim by the landlord to retain a part or all of it is made.

A security deposit is a large amount of money for most people and when one tenancy ends and a new one needs to be secured many people do not have the disposable income to cover another bond. Instead they rely on the previous bond to put towards the new bond. However, when there are delays in its return, this can mean either they are put in significant financial strain by paying the new bond or are left unable to secure appropriate housing whilst they wait to get it back (if they get it back).

Currently it is very arbitrary as to when a bond is withheld and timeframes and reasons for withholding under the RTA are frequently overlooked. This is because landlords/agents hold all the power as they hold the money and the tenant has no recourse other than to negotiate with the landlord (from a position of imbalance), give

up on receiving it or take the time-consuming and stressful step of applying to NTCAT³ for its return.

An independent bond authority can be set up, like in other jurisdictions⁴, too;

- pay out a bond or transfer to a new property, within days, where there is no dispute between parties;
- if the landlord wants to retain all or a portion, they must provide evidence which can be assessed independently;
- If either party disputes then the bond authority can then make a final determination (within much quicker timeframes than NTCAT);
- Then only more complex disputes would need to be appealed to NTCAT.

An independent bond board will in fact also benefit property owners and real estate agents by creating a universal and streamlined means into which to store security deposits, save the time and cost on their side associated with attending as many bond disputes at NTCAT and reduce the risk of running foul of trust account provisions in the RTA.

Bond boards will also generate income for the Government as a result of the interest accrued on the security deposits held, this income can be used to benefit stakeholders such as funding further tenancy advocacy services.

The only major dissenting view against establishing an independent bond board is from the Real Estate Institute of the Northern Territory (REINT) who in the 2015 discussion paper offered a predictable response but failed to identify any valid reasons not to implement the bond board. The bond board would not in fact add a further level of 'red tape' as REINT suggest⁵, but would create the only layer of regulation that actually provides some accountability for landlords and agents to ensure they cannot just withhold the bond on their own whims but will need to provide evidence that satisfies the requirements in the RTA before attempting to withhold a person's bond.

The March 2015 discussion paper ultimately found in favour of implementing a bond board in the NT⁶ and based on the current issues paper, the Government appears to now accept that an independent bond board will be implemented.

³ As well as paying the application fee to NTCAT to do so.

⁴ See; eg; Tenants' Union of Tasmania <><http://tutas.org.au/factsheet/bond/>

⁵ REINT, Submission to the Department of Attorney-General and Justice (2015) page 4.

⁶ Page 22 of the Discussion Paper where it states to establish a residential deposit authority is the 'recommended option'

We do take stock in the bi-partisan support for a bond board that was expressed in Parliament in 2018⁷ but question the need for the time and expense of a further discussion paper regarding its possible structure and operation. Instead of simply using the evidence available, including the technical discussion in the 2015 paper, and looking to the structure and operation of bond authority's in other jurisdictions⁸ to simply implement the legislative and operational requirements to set up a bond board.

Issue 29: Tenancy Trust Account Penalties

Based on the above discussion in support of the inclusion for an independent bond board it follows that some of the issues associated with landlords and agents breaching tenancy trust account provisions would also be addressed with the implementation of an independent bond board.

In terms of issue 29 identified in the discussion paper itself, we are also concerned with the disturbing pattern of non-compliance of s116 by agents and landlords reported by the Commissioner of Tenancies. We support recommendation 15 (a) and (b) to introduce a strict liability offence for breaches of s116 and to give the Commissioner powers to enforce penalties for breaches.

Question 27: Pets

It is our firm view that;

- A 'pet bond' is unnecessary and would be a regressive reform in today's rental market
- Renters should have an expectation that where reasonable they are entitled to keep pets on premises they rent.

Pet Bond

It is submitted that implementing pet bonds is not the way to encourage landlords to be more comfortable allowing pets but instead it will disenfranchise renters with pets further.

The fact remains a security deposit of up to 4 weeks rent is there to cover for all breaches of a tenancy agreement that may occur. This includes damage to premises that a pet may cause and if this does occur the bond can facilitate the compensation required. There is no practical need to have an additional pet bond for an amount of up to \$260, as to oppose to having a bond for any specific issue. The security deposit is intended to cover all scenarios. Pet bonds would be a further expense that will put

⁷ Footnote 219 of this Discussion Paper.

⁸ For example, the model in the similarly small jurisdiction of Tasmania.

off tenants from trying to keep the pets or will push people past their financial breaking point in terms of what they can afford as a security deposit.

Keeping Pets

People are more likely than ever to rent for longer periods of time and for many pets are considered a member of the family. To be out of contention of many rental properties due to owing a cherished pet makes people feel they are discriminated against for owing a pet. A rebuttable presumption in favour of keeping pets; putting the onus on the landlord to show genuinely why it would be unreasonable for that pet to live at the property and the removal of blanket 'no pets' clauses better reflects the changing rental landscape we are seeing in the Northern Territory. Pet friendly reforms could make the Territory a more attractive option to live and rent. It is submitted the Territory should look to the recent legislative reforms concerning pets in Victoria for guidance.

Issue 7: Increases in Rent

Renting in the Territory should not be met with never ending financial burdens in the form of rent increases. We agree with recommendation 6 (a) of the discussion paper that if a tenancy agreement does not provide for increases in rent, then, it cannot be increased during the term of the tenancy agreement regardless. On rental increases generally for renters right across the Northern Territory in practice section 41 does not sufficiently provide adequate protections. Increases should be limited to once every 12 months, in line with CPI (or similar method) and the RTA should include a greater range of factors for the Tribunal to consider when determining whether rent is excessive. For example;⁹

- (a) Rent payable for comparable rented premises;
- (b) the state of repair and general condition of the rented premises;
- (c) the cost of goods and services and facilities provided with rented premises;
- (d) Charges payable by tenant and landlord;
- (e) any work/improvements to property which the tenant has done with the landlord's consent;
- (f) any changes in rent and the condition of the rented premises since the commencement of the tenancy agreement or since last increase.

⁹ Residential Tenancies Act (Vic) 1997 s47(3).

As a result tenants would have some protection when faced with situations where repairs and maintenance are being ignored or there are other issues with a rental property yet they are told to pay a rent increase when it comes to renewal or if they refuse are forced to move out of their home.

Issue 1: Application of the Act

University Accommodation- In terms of recommendation 1(b) further and more detailed clarification of what living arrangements are excluded under the Act is agreed as necessary. However, it is submitted that point (iii) relating to university and ‘on-campus’ accommodation should not be a type of arrangement that is excluded from the operation of the RTA.

Also we do not want there to be any risk that excluding “on-campus accommodation” could exclude student accommodation such as that provided by private operators that might be on-campus or located very close to campus. This is because these tenants to these properties are often vulnerable as international students or persons not used to renting on their own and those positions of vulnerability can be exploited by those landlords. Whilst these type of arrangements may not meet the definition of “provided by educational institutions” a) an argument may be formed by those providers that they fall within that category and b) in any case, we believe there is no justifiable reason why tenants paying money to reside in accommodation provided by an educational institute should not be afforded the rights under the RTA.

It is also submitted that Reg 4A of the *Residential Tenancies Regulations*¹⁰ and its obscure reference to “Act not apply to North Flinders International House” which is now known as “International House Darwin” (CDU) should be abolished as those residents should also be afforded the rights otherwise available under the RTA- this exclusion should certainly not be broadened in any form.

Caravan Parks- Also for some time concerns have been raised about the lack of protections for those Territorians who do permanently reside in Caravan Parks. Although there is a separate *Caravan Parks Act* (CPA) it is extremely limited in its scope that most Caravan Park residents are prevented from exercising any of the rights afforded under it. Either the CPA needs to also be reviewed so its scope is widened, or the RTA incorporates some recognition for Caravan Park tenancies.

Issue 2: Lease Break Fees

Lease break fees have been widely and correctly criticised by Members of the Northern Territory Civil and Administrative Tribunal (NTCAT)¹¹ however Real Estate Agents continue to use them and purport that they have every right to do so, despite it been a contradiction to section 24 of the RTA which prohibits a landlord from

¹⁰ *Residential Tenancies Regulations (NT) 2000* Reg 4.

¹¹ See, eg; *Gatty & Darcey v Nou* [2016] NTCAT 249 (9 May 2016) at 35.

charging any extra charges or liabilities outside of rent and security deposit (unless specifically allowed elsewhere under the Act i.e- utility charges).

Lease break fees are also completely unnecessary because locating new tenants is a key competent of an agent's duties and the discussion paper correctly points out that it is not an expense private landlords face, therefore it is inappropriate for a charge that applies to some tenancies and not others. When a 'lease break' occurs whether private or through an agent the landlord is already entitled to any loss suffered in the form of unpaid rent and for any reasonable expense incurred as a result of the tenant's failure.

Therefore, both points (a) and (b) of the recommendations to amend the act are supported, to ensure there is no argument that the RTA prohibits the practice of lease break fees.

Issue 6: Co-Tenants and Sub-Tenants

We agree with the description around the difficulties with co-tenants vacating and entering tenancies before they are completed. It is a common problem and one that can leave tenants, including tenants who are not the ones occasioning a breach, in financial hardship. There is little coverage of these issues currently under the RTA.

We agree with both recommendations (a) and (b) in the discussion paper but suggests this review of the RTA should also explore legislative reform to have more clear cut recourse for people in situations where there is dispute over the correct disbursement of bond funds when one tenant has vacated during a tenancy and to better protect those that are unable to continue in their current tenancy due to domestic violence.

Issue 17: 'No Grounds' Evictions

Reforms of No Grounds evictions are currently considered a reform priority nationally¹² and the Northern Territory should use this rare opportunity for a review into the RTA to make provisions for abolishing no-grounds evictions that can set an example for the other Australian jurisdictions, rather than merely trying to catch-up to them years down the track.

We support campaigns for no-grounds evictions to be abolished, including that advocated by the Tenants' Advice Service, and a more suitable legislative system be ingrained to better reflect the changing face of private ownership vs long term renting in Australia.¹³

¹² See, eg, *Make Renting Fair Campaign* <https://www.make Renting Fair Campaign.org/in_depth_no_reason_evictions>

¹³ Keeping in mind the NT has the highest proportionate of renters per capita in Australia at over 50%.

Finally when a tenancy is validly terminated, regardless of type, much longer notice periods need to be provided to both parties (but particularly tenants) to allow them sufficient time to prepare for the upheaval of having to move home. The current timeframes are far too short (by far the shortest in Australia¹⁴) and create uncertainty for residents.

Issue 31: Application to Tribunal after Lease has concluded

It is submitted that section 122(1) should be clarified to ensure that an application for compensation for a breach by either tenant or landlord can be made during or after the commencement of a tenancy agreement.

We believe it is in any case an incorrect interpretation of the law to say otherwise as the general 3 year limitation period in the Northern Territory would apply to such claims. It is also a deeply unfair interpretation as it is not always practical or possible for a tenant to make an application for compensation during a tenancy (fear of retribution from a landlord in terms of not renewing a lease is just one reason why). Indeed, if a landlord can recover after a tenancy (i.e for rent owed) then you cannot have s122 applying to one party of a contract and not to the other.

Issue 32: Waiving of Rights

Similarly, the suggestion that a person waives their rights they would otherwise be entitled to under the RTA due to renewing a lease despite “accepting” a landlord’s failure to maintain the premises during the previous lease is regressive and unfair.

It goes against principles of tenure as people may for various reasons not want to move from existing premises despite outstanding maintenance issues and will negotiate a renewal of their lease- this does not mean they are accepting defects in the property that the landlord has failed to address. This gives a landlord an excuse to not accept their legal responsibilities just because the tenant has not taken the drastic step of moving from their home because of this issue. It is agreed that this could be a breach of s20 of the RTA as it essentially contracts outside the Act.

Conclusion

United Voice represents a large body of workers who are renters in the Territory, and we support a broad review of the RTA that provides a much needed balancing of tenant’s rights. This is in response to the long held imbalance that exists under the current statutory regime and how far behind the RTA is compared to Residential Tenancies legislation in other jurisdictions. United Voice believes that the outcome of these reforms should better reflect the changing reality for many that renting is a long-term prospect. United Voice supports not only the reforms discussed above but those relating to improving the rights of tenants including more adequate protections for tenants suffering from Domestic Violence, providing minimum standards for properties before they are rented, stricter rules on when tenants can be charged for

¹⁴ 120 is the national standard (landlord to tenant) across Australian Jurisdictions.

excess water and other utilities, continued regulation of draconian Residential Tenancy Database operators and clarity around termination procedures and applications to NTCAT.

We wish to express our general support for the submissions of the organisations and services that have day to day experiences dealing with vulnerable tenants.

25 August 2019

