



Tenants Queensland Inc

**Submission to the Transport, Housing and Local Government
Committee
on**

**The Residential Tenancies and Rooming Accommodation
Amendment Bill 2014**

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Who we are

Tenants Queensland Inc. (TQ), formerly known as the Tenants' Union of Queensland, is the only statewide community based organisation that provides services for, and seeks to represent the interests of residential tenants in Queensland. The TQ was formed in 1986, and is a non-profit, community legal service accredited under the National Association of Community Legal Centres' accreditation scheme.

Amongst other things, TQ aims to:

- Improve residential tenants' conditions' and,
- Enhance and protect residential tenants' rights;

The TQ operates a statewide telephone advice service, provides face to face assistance and legal casework.

During the last calendar year, Tenants Queensland advised in just fewer than 10,000 matters involving tenants seeking support and assistance about their rental housing problems.

The TQ provides training (accredited and non-accredited), information, support and specialist advice to other tenant advocates in relation to tenancy related legislation in Queensland.

TQ has been at the forefront of all tenancy law reforms since our inception. In recent years this has included being a major player in the development of: legislative protections for tenants from the unfair practices of tenancy databases; the Residential Services (Accommodation) Act 2002 and 2005 review of that legislation; and the Residential Tenancies and Rooming Accommodation Act 2008.

The TQ also submitted to government, just prior to the announcement of a combined civil and administrative tribunal for the state, a proposal for a new system of adjudicating tenancy disputes modeled on the New South Wales Consumer, Trader and Tenancy Tribunal.

Recent funding withdrawals have affected our ability to meet the needs of renters seeking our advice services. In the five months to the end of June 2014, 45,000 callers to the TQ's advice line received a busy signal. Additionally, our capacity to represent tenants' interests in policy inquiries like this has been greatly reduced.

Introduction

Tenants Queensland strongly supports the introduction of minimum standards for rental properties. Minimum standards would deliver a codification of current requirements (e.g. by-laws and building codes) affecting health and safety and provide greater expression of the current tenancy law requirements about the same (such as 'ensure the premises are fit for the tenants to live in').

It is important that the introduction of minimum standards:

- Includes a process whereby a third party (such as the Residential Tenancies Authority as outlined in the Bill, the housing authority or the Office of Fair Trading) is required to pursue an own motion investigate when they have

reasonable grounds to believe the premises are not compliant. This would provide an alternative mechanism other than action by a sitting tenant;

- Where possible makes use of current sections of tenancy law such as those which allow urgent action by the tenant if wish to seek an order for rectification or termination;
- Supports a more effective and accessible mechanism to enforce QCAT orders; and,
- Makes it an offense to rent out premises when they do not meet these minimum standards.

Why Minimum Standards are Important

The standard of premises, repairs and maintenance is the second most common issue raised with the TQ in our all our advice and casework. During the 2013 calendar year, 12% of our advice work involved tenants concerns about repairs and maintenance.

Many tenants live in premises which are in a state of disrepair or substandard condition. The condition of some rental properties poses a real risk to tenants and their families. Ensuring rental premises are safe is important for everyone, however, given that 34 per cent of private rental market households are tenants with dependent children, it is particularly important (2011–12 Australian Bureau of Statistics survey of Housing Occupancy and Costs).

Problems with the standard of premises, tenants ability to get repairs done and the continuation of the same repairs issues between tenants were tragically underscored in May 2010 with the death of an infant in a rental property in Yeppoon.

A damaged board caused the father's foot to slip through the deck, his baby falling from his arms. The issues with the deck had been raised by the current and previous tenants with the real estate agent to no avail. The (then) current tenant was concerned with the state of the deck from the time they moved in and had raised the matter informally a number of times, only starting a more formal process when the condition of the deck caused the accident.

Issues around repairs often interact with tenants' concerns for securing their future occupancy. With short term tenancy agreements and laws which allow for eviction without grounds, tenants are fearful of retaliatory evictions when they seek repairs to the property.

According to the report from the Victorian Council of Social Services *Decent Not Dodgy A Secret Shopper Survey* (VCOSS, 2010), a significant number of reviewed properties on the rental market failed to meet what most people would consider to be basic levels of habitability.

They assert that residing in housing of poor standard can result in:

- “Poorer physical and mental health from unhealthy and unsuitable conditions, such as damp, drafts, leaks, lack of cooling during heat waves, or the presence of vermin;
- Increased risk of preventable accidents due to poorly maintained infrastructure or faulty wiring;
- Increased risk of crime due to lack of adequate security;

- High bills due to inadequate insulation, efficient heating and cooling systems, window coverings, or water-efficient fixtures;
- Social stigma and isolation due to embarrassment at living conditions and avoiding visitors and other social contact near home”.

With an undersupply of and competition for housing at the lower end of the market, the substandard nature of some housing particularly undermines the living conditions of low income households. Much of the lower cost rental stock tends to be older properties where structural issues are more common.

Current Provisions

Relevant provisions in tenancy law require that the premises are ‘clean’, ‘fit for the tenant to live in’, ‘in good repair’, and that ‘the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises’.

Despite these provisions, many tenants are unable to enforce these rights. The introduction of minimum standards as expressed in the Bill will reduce the problems currently incurred.

Some of the current problems with enforcement are:

1. Renters do not know what is meant by the current provisions
Renters are generally unaware of what health and safety laws apply to the premises or where they might find this information. Similarly they do not know what it means for a property to be fit to live in.

The lack of expression or codification of these matters makes it difficult for tenants to know if the lessor is in breach and whether their concerns are reasonable.

2. Time Limitations and End of Fixed Terms
Many tenants attempt to effect repairs in an informal manner in order to develop or retain ‘friendly’ relationships with the lessor or agent. If the repairs are not done and later they wish to pursue the repairs more formally they may find their matter is out of time (section 419). This may be the case for a claim of compensation if not for the repairs themselves.

Commonly in Queensland, tenancy agreements are for a fixed term period of six months. The tenant may also ‘run out of time’ as the end of the fixed term agreement looms if the lessor or agent seeks to get rid of the tenant on a without ground notice. This can also lead to new tenants inheriting the repair problems.

3. Inherited repairs
There is no mechanism for continuation of any action seeking the correction of repair issues once a tenant leaves the premises. This is a key problem with the current legislation.

Tenants who have not been successful in getting repairs done will sometimes choose to leave due to concerns for their safety and that of their children. They may still wish to pursue the matter so that the next tenants do not have to face the same issues, but they are unable to do so once they are no longer tenants.

Similarly, some are upset to find out that the previous tenants have experienced the same repairs and maintenance concerns. By that time, these tenants have spent money to move into the property and are now faced with expending their energy and other resources to affect the repairs, all the while worried about a future retaliatory eviction.

4. Retaliatory Eviction at the End of the Agreement

The lack of a third party with a role to investigate and enforce action on repairs and standards means that tenants must themselves seek orders for repairs within QCAT. However, tenants who seek repairs are often considered problematic by lessors and agents. Tenants fear the consequences of pursuing repairs issues lest they be evicted in retaliation because the lessor or agent may choose not to renew the tenancy agreement by issuing a without grounds notice to leave. This fear particularly affects low income households who have limited housing choices and limited financial resources to move.

The risk for tenants is not only having to move but the agent providing a poor verbal reference if contacted when they apply for a new property.

The circumstances of a retaliatory eviction were described in the following way to TQ during a 2007 project:

“The last place we lived in was an absolute disaster. We have exposed asbestos in the shed and the idea of cleaning it up was to close the door and tell us not to go in. After making a big fuss and having them fix and change it, we got an eviction notice.”ⁱ

5. Order and enforcement

Currently if a lessor fails to meet their obligations about the state of the premises they are acting unlawfully. However, such failures by the lessor are not compliance issues which can be pursued and prosecuted by the Residential Tenancies Authority (RTA). Effectively non-compliance with these tenancy law provisions (unless there is a resulting loss of amenity whereby the tenant may pursue a rent reduction) can continue without fear of penalty or sanction under tenancy law.

Given they cannot make a complaint to the RTA, a tenant's only course of action is to seek an order for repairs or termination in the Queensland Civil and Administrative Tribunal (QCAT).

Even if the tenant successfully obtains an order for repairs, they will face further difficulties if the lessor does not satisfy the order. Enforcement action for non-

monetary QCAT orders must be taken in the Supreme Court, an effectively inaccessible step.

Support for Minimum Standards

The Coroner's report on the death of the infant in Yeppoon, release in late 2012, found that the child's death could have been prevented if there were better property management practices and better standards for rental properties. Following the inquest, the Coroner's office made 13 recommendations to the Queensland Government and industry groups, none of which have been adopted to date. A copy of the recommendations can be found at Appendix One.

At the time, a number of real estate representatives publicly supported the introduction of building inspections, asserting that agents do not have the expertise to know if the premises are safe and that it would help them deal with lessors who are reluctant to undertake maintenance.

Minimum standards for rental housing are currently required in many parts of the world, including the United Kingdom, United States, Ireland and Ontario, Canada. It is commonly accepted that premises available for rent should meet basic habitable standards.

Recently the Tasmanian government passed similar minimum standards codification within tenancy laws in that state. Yet to be proclaimed, these will come into effect over the next few years.

Requirements are:

- 1) Weatherproof and structurally sound,
- 2) Cleanliness at the start of the tenancy,
- 3) Good repair,
- 4) Weatherproof and structurally sound
- 5) Bathroom and toilet,
- 6) Cooking facilities,
- 7) Electricity,
- 8) Heating in main living area,
- 9) Window coverings and
- 10) Adequate ventilation. (Tenants' Union of Tasmania).

South Australia also has minimum standard requirements. The Housing Improvement Branch of Housing South Australia investigates rental housing conditions and requires owners to improve substandard property to comply with the Housing Improvement Act 1940 (South Australia) as amended (*Housing Improvement {Standards}*) Regulations 2007.

When a Housing SA tenant request is not fulfilled in time, rent control may be imposed on the premises. Standards cover general standards; toilet, bathroom and kitchen; water supply and sewerage; miscellaneous (see Appendix 3).

Third Parties

The Bill proposes a role for the RTA in enforcing requirements for lessors to meet these new responsibilities. TQ strongly believes that the introduction of codified responsibilities within tenancy law must be accompanied with a third party process to intervene when these are not met.

For reasons outlined above, there are barriers to tenants themselves raising problems and pursuing their rectification. A third party must have a role in investigation and enforcement for any provisions to be effective. The process should not be entirely dependent upon a sitting tenant taking action for repairs to be done.

Offence Provision

The Bill should be modified to identify that it is an offence to rent out a property which does not meet the minimum standards.

Conclusion

All households should have access to premises which are safe.

TQ believes that the introduction of minimum standards in rental properties is a welcome step forward. Introducing minimum standards simply gives a further, deeper and more consolidated expression to health and safety responsibilities which are already required in tenancy and other laws and is therefore a step which should not be feared by responsible lessors and agents.

The codification of those responsibilities so that people better understand what is required, the introduction of a third party to take complaints so that tenants do not have to risk their tenure will, however, help deliver outcomes. For that reason TQ asserts that the introduction of minimum standards will substantially contribute to protecting renters from dangerous conditions.