



Wednesday, August 16, 2006

Ms Maria Fidge  
Office for Community Housing  
GPO Box 292  
**Adelaide SA 5001**

**Re: New Appeals System**

Dear Maria,

I am writing to you about concern, which has been expressed in a number of our regular forums about the new appeals system for the Community Housing Sector.

The principal concern is around the boundary between the Residential Tenancies Tribunal and the Community Housing Appeals Panel (CHAP).

Section 84(11) of the South Australian Co-operative and Community Housing Act states that:

(11) The relevant appeal authority must-

- (a) Decline to proceed (or further proceed) with an application under this section if it appears that it would be more appropriate for proceedings to be taken in a court or tribunal constituted by law;
- (b) Decline to proceed (or further proceed) with an application under this section if proceedings related to the subject matter of the application have been commenced in a court or tribunal constituted by law.

The Guidelines issued by SACHA in February 2006 state that matters, which come under the jurisdiction of the Residential Tenancies Tribunal "cannot be heard by the CHAP". This is on page 9 of the Guidelines book supplied.

There is a lot of concern that if people word their appeal in the right manner they can use loopholes. This becomes quite evident in the appeals training. If a person appeals a "decision" of the Co-operative around a tenancy issue then any action in relation to the appeal must be suspended. This would then carry over to an appeal lodged to the CHAP.

The actual jurisdiction of the CHAP is very unclear. Can the Office for Community Housing please clarify what jurisdiction the CHAP has in relation to matters heard before them? Can there also be some clearer description of what can and can not be appealed?

Under the Residential Tenancies Act there is no obligation to renew a fixed term tenancy agreement. As it is not defined that there are certain issues that can not be appealed, people fall on the idea that they can appeal any decision. Timeframes around the hearing of appeals can allow a fixed term tenancy to lapse into a periodical tenancy thus making it even harder to remove a person.

A matter also of great concern for the Community Housing Sector is that it is a requirement for individual CHOs to have a timeframe by which they have to notify the appellant of the decision of the internal Appeals Committee. The current timeframe set out in the appeals by-laws set down by SACHA (now the Office for Community Housing) is 2 days. Why then does the CHAP not have a similar requirement? If the CHAP take as long as they see fit then it can quite seriously affect the Co-operatives going through the appeals process. If it is a requirement for the CHO to have a timeframe for handing down a decision then this should also apply to the CHAP.

The CHCSA's Associations' Forum will be discussing this matter further at their next meeting. The next meeting of the Forum will be held on the 1<sup>st</sup> September 2006. I would appreciate some clarification on these matters ASAP and if it could be made available before the 1<sup>st</sup> September, it would be most appreciated.

Other issues that were raised include:

1. The lack of training around what people do in relation to appeals that go to CHAP. There is training around the internal appeal requirements and what the CHO should do, but it is very unclear as what is required if an appeal goes to CHAP.
2. Are the decisions handed down from CHAP binding on the CHO as a decision could be made that effects the CHOs autonomy in making its own decisions which effect the running etc?
3. Can the decisions of a 3-person internal appeals committee of a CHO overrule its Rules and By-laws when the internal appeals committee is to be elected at the AGM to handle and make decisions on behalf of the Co-operative?
4. Why are determinations of the CHAP not open to CHOs especially if determinations are binding? However decisions made by the Residential Tenancies Tribunal are binding decisions and yet they are on the public record. CHOs can not be expected to know the law if decisions of the Panel are secret.

Yours in Co-operation,

Philip Studt  
Sector Resource Worker

Cc: Jan Sundberg