



## Community Housing Council SA

<b>TOPIC:</b>	<b>Submission To The Review Of The South Australian Residential Tenancies Act 1995</b>
<b>DATE:</b>	<b>February 2003</b>
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The Community Housing Council of SA (CHCSA) is the peak body for the Community Housing sector in South Australia. The sector includes CHOs in the form of both Housing Associations and Housing Co-operatives. These are registered under the Co-operative and Community Housing Act 1991. Housing Associations are initially incorporated under the Associations Incorporation Act 1985. All CHOs offering housing for rent, act as landlords under the Residential Tenancies Act.

CHCSA enjoys the support and active membership of over 80% of the Community Housing Organisations (CHOs) operating in this State. On behalf of our members and all CHOs, the CHCSA makes the following submission to the Review of the SA Residential Tenancies Act 1995, and in response to the Discussion Paper of November 2002.

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### SUBMISSION

#### **1. Introduction**

In overall terms CHOs regard The South Australian Residential Tenancies Act 1995 ('the Act') as legislation guided primarily by the structure of the private rental market. As such it is felt that the Act directs the landlord-tenant relationship (and in some cases the involvement of other parties) in ways that are not always appropriate to the principles and values of Community Housing, or the specific aims of CHOs. While we support a situation where CHOs continue to function as landlords under the one encompassing Act, it is felt that some changes are necessary to better reflect the specific nature of Community Housing. In more general terms, it is felt that the daily business of enforcing the Act, particularly through the Residential Tenancies Tribunal (RTT), would also benefit from a better understanding of the values and aims of Community Housing.

**Recommendation: that members of the RTT are provided with appropriate education about the Community Housing sector.**

**Recommendation: that the Act continues to encompass Community Housing providers as landlords.**

## **2. Breaches of Rental Agreements by Tenants; Rent Arrears:**

(Ref: RTA Section 80; and Discussion Paper sections 2.3.1 & 2.3.2)

In general, the current 'Form 2' processes are seen to take a confrontational approach from the outset, focusing on the threat of the CHO seeking vacant possession. This approach is regarded as out of step with the goals of Community Housing to support those in need to achieve a stable housing situation, and to sustain their tenancies over time. Vulnerable tenants faced with such a 'threat' may fail to understand the other options open to them, or simply abscond. Evicted tenants will often become homeless, and return to the social housing system as a high priority applicant. In many cases of unpaid or continually late-paid rent arrears CHOs regard the establishment of a negotiated payment plan as a preferable outcome.

In light of these concerns, we propose change in two areas of the Act, or associated regulations. Firstly, we suggest that an alternative standard notice ('Form 2B') could be available to CHO landlords, to issue to tenants in the event of a breach; outlining options and staged consequences for this and any further breaches, rather than notifying the immediate threat of termination of the tenancy agreement. For example, in a case of rent arrears, initial 'stages' might be:

1. The tenant to immediately remedy the arrears
2. If this doesn't occur, or if another breach occurs, then the establishment of a negotiated payment plan, developed between landlord and tenant, and backed by the authority of the Tribunal.

This would further require the Act to formally identify such negotiated agreements as an option available to CHOs/the Tribunal in dealing with breaches by tenants, and for processes to be put in place to assist this to occur: for example; providing sample agreements. It should also be considered whether such agreements could be established and backed by the Tribunal, without the need for a full hearing; perhaps through a mediation session. (*See also section 4*) Payment plans may need to consider formalising the use of mechanisms such as Centerpay or direct debits where these are available. It could also benefit CHOs if it were possible for other debts owing from a tenant (other than rent arrears) to be recognised and incorporated into a payment plan.

However, where rent arrears persist over longer periods, this can represent a considerable financial risk to a CHO, and thus to the housing security of its other tenants. CHO budgets in general have very little 'space' to cover these risks. Liabilities, and demands on CHO management, have become particularly severe where appeals have been made to other courts (*See also section 6*), delaying resolution of the problem over an extended period. Therefore, while we strongly support such a non-confrontational approach as above being available, negotiated agreements should identify clear and timely outcomes for a failure to meet the terms agreed, including vacant possession when other steps have been exhausted.

Some CHOs also have problems with chronic late payment of rent, although inside the 14 day 'deadline'. Perhaps a similar process as suggested here might be available for use in such cases.

**Recommendation: that the Act be amended to identify negotiated landlord-tenant agreements as an option available to CHOs and/or the Tribunal in dealing with breaches by tenants; and that processes are put in place, including an alternative 'Form 2B', to enable these agreements to be formed.**

### **3. The Schedule 3 (90 day) notice:**

(Ref: RTA Section 91)

Current provisions allow for the 90 day notice of termination to be issued without reason or right of appeal (although not by Housing Co-operatives with respect to their members). There is some concern that this is not appropriate to the principle of security of tenure within the Community Housing sector, and is not sufficiently cognisant of tenant rights. The sustainability of tenancies and balance of rights in the private rental sector is also of concern to us, as conditions here reflect upon the demand for Community Housing. We endorse the wider view that private rental is no longer a short-term option for many households, but a form of long-term housing in its own right. We believe no-reason termination does not reflect an appropriate balance between landlord rights and security of tenure in this new environment. Therefore we support the removal of this provision from the Act. If this is not to occur, then we would support its removal as a provision available to Community Housing landlords.

However, it must be emphasised that, while we support the removal of no-reason termination in principle, this must be conditional on other changes to the Act and its administration. Under the current arrangements, some CHOs regard the 90 day notice as a useful mechanism of last resort, usually because of the long delays that have occurred in resolving issues with difficult tenants, and the financial liabilities this can represent (*See also section 6*).

**Recommendation: subject to other changes, that the Schedule 3 provision for no-reason termination be removed from the Act.**

**Recommendation: if no-reason termination is not to be removed from the Act, that it be removed as a provision available to Community Housing landlords.**

### **4. Mediation services:**

(Ref: RTA Section 34 and Section 90.)

Although the Act currently allows for the Tribunal to appoint mediators in some circumstances, the CHCSA believe the use of skilled mediation services is under-utilised. CHOs have indicated multiple cases to us where mediation would likely have been a more effective, ‘early-intervention’ response to conflict; whether between landlord and tenant, or tenants and other parties. They also suggest that mediation would be more *cost-effective* than a full Tribunal hearing in many situations, and would also be less intimidating to Community Housing tenants. Mediation would also offer a tool for dealing with Section 90 applications to the Tribunal from aggrieved neighbours.

**Recommendation: that greater use be made of mediation processes, as an alternative to Tribunal hearings and with appropriate powers to establish negotiated agreements that can be recognised under the Act.**

### **5. Unacceptable Tenant Conduct:**

(Ref: RTA Section 90)

Some concerns have been raised by our members about the potential under section 90 for prejudice to be exercised against community housing tenants by neighbouring third parties, because they may be seen as ‘different’ or ‘not appropriate to the area’.

In situation of multiple adjoining tenancies, in flats for instance, concerns have also been raised about the management of personal information supplied by neighbours as complainants. Telephone numbers supplied to the person complained against has led to some cases of harassment. In light of the above proposals regarding mediation, the CHCSA suggests the Review consider *mediation* as an early response to complaints against tenants from third parties. (*See also section 4*)

More specifically, we suggest the Review consider that the appropriate party to be the direct subject of formal complaints from third parties may be the landlord in question, rather than the tenant. If so, it would fall to the landlord to negotiate a solution with the tenant, or seek a possession order from the Tribunal.

## **6. Administration of the Act:**

Concerns has been raised by a number of our member groups that rulings from the Tribunal have not always been appropriately cognisant of, or consistent in relation to, Community Housing values, structures and issues. We would suggest that the processes whereby Tribunal members are appointed and trained is reviewed, so as to encourage a membership with appropriate skills. We also emphasise again that information about Community Housing be provided to members of the Tribunal.

The CHCSA is also aware of numbers of cases that have been brought to the RTT and subsequently appealed to the District Court, without a clear resolution necessarily resulting from that appeal; and matters sometimes being referred back to the RTT. It seems these cases in particular that have allowed unresolved problems to persist over long periods of time, sometimes up to twelve months. Obviously, this places considerable pressure on the management and financial resources of a CHO. We ask whether the Review should reconsider the jurisdictional relationship between the RTT and other courts in the light of such cases. In general we would favour a situation where the RTT is empowered to bring cases to a resolution in its own right.

Other points raised in this submission also reflect on the procedural formality of RTT hearings, and the formal structure and language of some written material. This is seen to be intimidating to some vulnerable Community Housing tenants, and as potentially exclusionary to those with poor literacy or English language skills. Although the greater use of mediation might avoid these problems in some cases, processes should be reviewed to reduce unnecessary formality.

**Recommendation: that appointment and training processes for Tribunal members be reviewed, to encourage a membership with consistent skills and understanding in relation to Community Housing.**

**Recommendation: that the relationship between the RTT and district courts be reviewed in light of concerns expressed.**

## **7. Security Bonds:**

(Ref: RTA Section 61 and regulations; Discussion Paper section 1.5)

The current terms and limits of the Act allow for bond amounts equal to four weeks of rent payable for the vast majority of Community Housing tenants. We regard the current structure as conceived around private rental needs, and ambiguous with respect to aspects of the Community Housing rent structure. For Community Housing properties, it may be either a 'full rent' amount payable (known as 'ceiling rent'), or a subsidised rent, depending on household income. If 'rent payable' is interpreted as the latter, then with tenants on lower incomes, and therefore low rental rates, this means the bond amount is sometimes grossly insufficient for its intended security purposes; for example, to cover costs of repairs on a vacated property. Therefore, we propose that CHOs be able to charge bonds equal to four weeks of the *ceiling rent* calculable on a property.

**Recommendation: that CHOs be able to charge bonds equal to four weeks of the 'ceiling rent' calculable on a property.**

## 8. Student Housing:

Student accommodation is currently not covered under the RT Act. There are now increasing numbers of students housed by CHOs in SA. The CHCSA supports a view that student accommodation should be brought under the Act, although this may vary for colleges and halls of residence. It may be more appropriate for these to be covered under legislation for boarding houses.

**Recommendation: that all student accommodation be brought under the Act, with the possible exception of colleges and halls of residence.**

## 9. Non-Member Tenants of Co-ops:

In consultation with the sector, a number of issues have been raised regarding the rights of non-member tenants of Housing Co-operatives. In many ways, of course, these issues overlap with those concerning fixed-term lease tenants in private rental. In particular, we would suggest that provisions be considered for a specified term of notice to fixed-term tenants, if their lease is *not* going to be renewed. This could also apply to those people housed as ‘prospective members’ of housing co-ops, but who are not successful in gaining membership.

**Recommendation: that a specified term of notice be required for tenants on fixed-term leases, if their lease is not going to be renewed.**

## 10. Advice & Advocacy Services

(Ref: Discussion Paper section 2.6)

The CHCSA supports the establishment of an advice and advocacy service for private rental tenants, and improved funding for HASSA as the advice and advocacy service to the Community Housing sector.

## 11. Other Matters:

*Variation of leases:*

The Review may wish to consider giving the Tribunal the power to vary lease agreements, so as to require rent payment by Centerpay or direct debit in cases of chronic rent arrears, and where those options are available.

*Debts owing to CHOs from ex-tenants (Ref: RTA Section 94)*

The Review may wish to consider giving the Tribunal more powers to enforce its orders for repayments of debts owing from ex-tenants.

Signed:

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