

LANDLORDS NEWS

VOLUME 163

August 2018

ANNUAL GENERAL MEETING

**Tuesday
7th August 2018**

**Fullarton Park
Community Centre
411 Fullarton Road
Fullarton SA 5063**

**6:50pm for 7:00pm start
in the Parkview Room**

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IN THIS ISSUE

There are two articles on page 2 reminding members to please use their membership number FIRST as part of any notation when paying any money into the Landlords' Association (S.A.) Incorporated Commonwealth bank account. This applies to either by direct electronic funds transfer or cash payment at any Commonwealth Bank branch. All payments are receipted by our treasurer so the only hope of discovering the transferees' payments mentioned on page 2 is if you have paid your renewal fee and you have not received a receipt, please contact Patricia by telephone on 08 8258 6660 or by email to treasurer@landlords.org.au to resolve these outstanding renewals and obtain a tax deduction receipt.

Another important topic is that this meeting is our Annual General Meeting at which we dissolve the current committee and elect a new one to steer us for the next twelve months, nominations please?

Smoke Alarms get another mention; they need to be replaced if they reach the tender age of ten years. We are able to purchase smoke alarms at wholesale prices from Brooks and pass on to our members with a \$5 mark up to cover our administering expenses.

Contact myself on 08 8258 6660, 0408 830 382 or by email to rodney.webb@landlords.org.au if you wish to use this service.

Rodney Webb.

GENERAL MEETING GUEST SPEAKER

Our Guest Speaker for this month is **Mr. Andrew Kubenk.**

Andrew Kubenk is a financial strategist with Wizdom. Andrew has previously worked as a strategist with Investor Loans Network and spent 4 years as an Executive Manager with the Commonwealth Bank. As a result of his extensive employment history he will be in a position to share with us the difference between liaising with a mortgage broker or going straight to your bank

MEETING AGENDA

- Meeting opening and welcome
- Apologies
- Guest Speaker
- Minutes of the previous meeting
- Business arising from minutes
- President's report
- General business
- Dissolution of committee
- Election of new committee
- Close meeting

MEMBERSHIP RENEWALS

It was fast approaching, the end of another financial year again, it is now history. To be included with your printed November newsletter will be an invoice for membership renewal if still due prepared by the guardian of our treasures, Patricia. If paying by direct debit/credit please use your **membership number** as the **first** text of your notation. You may wish to renew at our August meeting.

*Rodney Webb,
membership officer.*

DEAR FELLOW MEMBERS

Please, please, please use your membership number as a notation when paying any money into the Landlords' Association (S.A.) Incorporated bank account. It is the best possible way for us to be able to positively identify the person/s making the payment. There is one deposit transaction made on the 1st November last year from PCU (which we assume to be the Police Credit Union), one deposit transaction on the 30th April this year from a Bendigo Bank branch and on the 2nd of July this year, another credit to our account with the notation "Kevin Wesley Bil". We have not been able to identify the payees. We need to identify who made these payments as a matter of urgency as the memberships will not be renewed resulting in no further assistance from our association as well as these depositors not having a receipt for their expenditure.

Patricia and Rodney Webb.

Stop Press: And another one, this time on the 11th July from Bendigo Bank, ref no. 165074.

The following information I received as an email from CBS and it is only part of their newsletter. To activate the links Hold the Ctrl key and left click on the link text.

Rodney Webb.

From the Commissioner

Consumer and Business Services is always looking at ways to better protect consumers and reduce red tape for business. Legislative reform is an effective way to achieve these outcomes.

Some exciting changes are proposed for:

- Gift cards - requiring a minimum expiry date of 3 years

- Ticket scalping - to outlaw the practice
 - Liquor reform - implementing further changes
 - Australian Consumer Law - increased penalties
- We look forward to sharing more information about these initiatives as they progress.

*Dini Soulio
Commissioner*

Tenancies

Repairs and maintenance - The highest number of calls to CBS tenancy advice is about repairs and maintenance at a private rental property. Landlords and tenants can learn what needs to be repaired and how long it should take.

Rooming house bonds - We have increased our focus this year on rooming house owners who don't lodge bonds. Reports will remain confidential to protect residents. Understand your rights and responsibilities when paying or lodging a rooming house bond.

Real estate - There are new requirements for property managers, trainees, trust accounts and increased penalties. Read about changes for the real estate industry that started on 30 April. Property managers are also reminded to complete training and register with CBS by 28 September 2019.

WELCOME TO OUR NEW MEMBERS

Ms Helen MAKSYMOUNCZ
Ms Briana PROCTOR
Ms Rosemary BARNES
Ms Margaret BUNFIELD

ELECTION OF COMMITTEE MEMBERS

One of the agenda items for the August Annual General Meeting is to dissolve the current committee and elect a new committee to guide our association through another year of dealing with landlord related issues that need to be clarified and also to support our members in their business of renting private dwellings to tenants in conjunction with the complexity of relevant Government Legislative requirements. We operated with a reduced committee for the past year which is not ideal. There are eleven positions consisting of:

President, Vice President, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer as six members of the Executive committee and a further five general committee positions.

I ask that you please offer your services to govern our association in order to have a full committee providing our association members with a varied and wide range of knowledge and expertise to assist us in our profession.

Please contact us by phone to John Wyk on 0419 804 509, Rodney Webb either on 0408 830 382 or 08 8258 6660 or alternatively by email to lasa.info@landlords.org.au should you be interested in assisting our organisation. The work load is not very high especially if we have a full committee to share the duties.

Rodney Webb.

INVESTING IN RETAIL PROPERTY – AN ARTICLE FROM JOHN WYK

Whilst members of the Landlords' Association (S.A.) Inc. are all investors in Residential Real Estate; houses, flats, units, townhouses etc. some of us have a range of other investments. This can be through shares, fixed interest, bonds, mortgages and for the purposes of this item other forms of real estate such as retail, commercial, industrial and hotels.

This article is based on my experience of around 30 years investing in retail property. That is free standing and row shops, offices and small scale venues.

This is not meant to be (nor is it) an expert analysis rather perhaps, an appetiser to whet your interest or alternatively, to scare you off.

The mode of ownership of retail property mirrors that of residential. Holdings can be Torrens, strata or community title, or even moiety. The considerations that apply to each mode of holding in residential apply equally to retail. The ownership structure too, can be as varied as residential, e.g. individual, partnership, company trust etc. I won't elaborate any further on those considerations here.

As with Residential Tenancies, over recent years, greater government regulation has been introduced to protect tenants, in particular through The Retail and Commercial Leases Act, but in the main the

underlying principle of a retail tenancy is still that the lease is an agreement between the landlord and tenant and all actions arising from the tenancy are read in the context of the lease.

So let's look at the features of a typical retail tenancy.

- The lease will typically be for a term of say three years with two rights of renewal by the tenant of a further 3 years each. There are generally pretty strict conditions applied to exercising these rights.
- The tenant will be responsible for all outgoings, such as SA Water, Council rates, ESL, Strata Contributions (where appropriate) and in some circumstances building insurance in the landlord's name. Not land Tax unless the rent is over a pretty high amount (\$250,000 pa increased to \$400,000pa. Effectively this is the point at which the Retail and Commercial Leases act no longer applies to retail tenancies).
- The tenant is responsible for all internal fixtures and fittings, floor coverings, etc. Painting (at regular intervals), general maintenance and often maintenance of the landlord's equipment.
- Where the tenant breaches the terms of the lease there are remedies open to the landlord, including a process of 'distrain' seizing and selling the tenants goods to recover outstanding rent. I must point out that in this process there are procedures which need to be followed for the outcome to be legal.
- Rental returns and the capital value of the premises are closely linked. For example retail premises in highly sought after areas, such as Norwood Parade and Glenelg's Jetty Rd provide a much lower rate of return (and hence higher capital value) than a strip of shops in a suburban location or even worse in a minor country town – risk and return! In a similar way the return on retail property will rise and fall with the broader economy.
- Nonetheless rates of return are typically double or more, than the rates of return achieved from residential tenancies especially taking into account outgoings which are the landlord's responsibility in the residential setting but not retail.
- The risks that the landlord of retail premises bears are significantly more substantial than those of the residential landlord. To name a few;
 - vacancies can be far more protracted in an economic downturn, eighteen months or two

years is not uncommon;

- the landlord relies on the business nous of the tenant. I've had two tenants running the same business in the same premises, one couldn't make enough to pay the rent the other has operated a booming business for more than 10 years, some luck of the draw but careful tenant selection is the key.
- Changes in the particular sector, e.g. big new supermarket opens up down the road or a shift to online shopping can totally decimate the use of your premises,
- and finally (for this list at least), even though the HIA doesn't apply to retail, specialised premises, such as, for example Pizza Hut and Sizzlers often become worthless once the original tenant moves out. – Food for thought – pun intended!

So in summary investing in retail property is an alternative to residential tenancies. If it goes well it can provide greater return on capital and less work. On the other hand if it doesn't go well the costs can be substantial.

MISSING TENANTS

We are regularly asked by landlords how to contact former tenants to return personal items left at properties. Hence if you know of these people please call Rodney on 08 8258 6660 or 0408 830 382. Our 'Missing Tenants' section is updated on a regular basis in order to assist with this process.

Ms Nadia Marie PARISI, Daniel PHILLIPS also known as Daniel JOEL, Ms Melissa PULBROOK, Mrs Simone SALATHE, Ms Candice MARTIN, Mr Christopher GREEN, Mr Caleb THEATRE, Ms Melissa GRAHAM, Ms Peta IRELAND, MR Russell KROPP, Ms Chloe Jane ANDREW, Ms Geraldine HARFIELD, Kylie AUBERT, Dylan CHENOWETH, Jessica ROBERTS and Matthew CAMPBELL, Ms Sharon Louise FULLER, Ms Hayley J GOODWIN aka DOBINSON, Mr Fletcher TEAGUE, Ms Ashleigh VILLANI, Sing ANUSHEEL, Sheli Sharin DEY, Ms Brooke BARNES, Mr Martin KUNDART.

SACAT'S EXPANDING JURISDICTION JULY 2018

On **1 July 2018**, SACAT will be conferred review jurisdiction under the *Dog and Cat Management Act 1995*, and from **5 July 2018**, the next phase of expansion under the *Statutes Amendment (SACAT No 2) Act 2017*.

From 5 July 2018, SACAT will have review jurisdiction under the:

- *Adoption Act 1988*
- *Births, Deaths and Marriages Registration Act 1996*
- *Land Acquisition Act 1969*
- *Police Superannuation Act 1990*
- *Southern State Superannuation Act 2009*
- *Superannuation Act 1998*
- *Public Corporations (Southern Select Super Corporation) Regulations 2012 made under the Public Corporations Act 1993.*

In addition, SACAT will be conferred original jurisdiction from 5 July 2018 under the:

- *Births, Deaths and Marriages Registration Act 1996*
- *Partnership Act 1891*
- *Police Superannuation Act 1990*
- *Superannuation Act 1998*

For more information about each new jurisdiction, please visit the SACAT website: www.sacat.sa.gov.au or call 1800 723 767.

Applications of this kind will be handled by SACAT's Administrative & Disciplinary Stream.

New SACAT Fees – from 1 July 2018

Fees at SACAT are changing from 1 July 2018.

Fees for applications for a review of a land valuation decision under the *Local Government Act 1999* or the *Valuation of Land Act 1971* will be reduced to \$200 for individuals or \$250 for prescribed corporations.

All other fees will be increased in accordance with consumer price index (CPI). Fees for most initiating applications at SACAT will be increased to \$73. Fees for applications for internal review of SACAT decisions and for applications for reviews of decisions relating to lobbyists will be \$557 for individuals or \$782 for prescribed corporations.

Fees may be waived or reduced upon production of evidence of financial hardship.

For more information, please visit the SACAT website: <http://www.sacat.sa.gov.au/bringing-a-case/fees-and-charges>

The following article is an article that is more of an advert than an information bulletin but it may be of interest to you. I have not corrected any text.

John Wyk.

Landlords and tenants are set to both benefit financially with Sunyield, Stoddart Group's new solar technology.

A new batch of homes in Queensland, built by the likes of Choice Homes and Brighton Homes, will see the solar panels save as much as \$275 a year on electricity.

Stoddart Group's general manager for energy systems Adam Taylor says solar energy usage was once a difficult conversation with landlord and tenant before the new technology.

"It was too difficult to manage," he said.

"With SunYield, if the tenant chooses to use the solar panels, all solar and grid power is measured automatically via a smart switchboard and the tenant receives a single monthly power bill for all electricity consumed from both the solar and the grid.

"Renters have long missed out on the benefits of solar power simply because it was too hard or complicated for landlords to justify the cost.

"SunYield changes this by ensuring that solar on a new rental property is a good deal for the landlord, as well as the tenant.

The process is completely automated, with the landlord then receiving a payment for all solar generated, whether it was used by the tenant or sent to the grid.

"With this technology, the landlord owns the solar system and can either sell the power to their tenant at a discount to the market rate or export it to the grid if the tenant chooses not to buy it."

The SunYield package includes a 6.5 KW solar power system, combined with a Stoddart Smart Board that replaces the standard meter box on a new home.

SunYield is also battery ready, allowing landlords to add batteries as they become cheaper and increase the proportion of solar-generated power sold to the tenant.

Choices Homes director Troy Knight said the innovative technology is good for his customers, their tenants and the environment.

"We're always looking for ways to offer our customers a better investment, which made the decision to put SunYield on every home a simple one," he said.

"For our customers, it means an increased rental return and a home that's easier to rent.

"For our company, it means being one of the first to offer an innovative product that is good for our customers, their tenants and the environment.

The Australian-first technology was designed locally and is being launched in Queensland with leading investment builders Choice Homes, Creation Homes, Brighton Homes and MetInvest, with each including SunYield as standard on their new homes.

Stoddart Group will soon extend the solution to other builders and plans to install 15,000 SunYield systems over the next 3 years and Taylor believes the technology will quickly become standard on all new investment properties.

"In the next 2-3 years, we'll see a complete shift - from rarely seeing a rental property with solar to it being difficult to find a new one without it," he said. Taylor said they did not have plans to release the product to the established homes market due to the way the technology works.

Stoddart Group partnered with leading energy provider, Powershop and technology company, Reposit to develop the solution and make it a seamless experience for the landlord, tenant and homebuilder.

Powershop boss Ed McManus said giving renters the ability to use solar power is positive for their power bills and the energy market.

"Powershop is always pursuing ideas that can help Australians get in control of their power bills. This program not only helps customers save money, but it also lowers their environmental footprint and puts more renewable energy into the grid.

Reposit Power CEO Dean Spaccavento said the solar and battery industry is booming in Australia, but there have been technological barriers preventing investors and renters from benefiting.

"We can now do things with electricity that only a few years ago were ideas on paper," Mr Spaccavento said.

"With smart technology like SunYield coupled with Reposit, we all now have a say in how our electricity is generated and what we pay for it.

"It's now possible for renters and landlords alike to benefit from rooftop solar. Landlords earn a profit and renters benefit from lower energy bills.

"SunYield is an investment now that will continue to improve and deliver results well into the future."

BIO ON OUR GUEST SPEAKER - ANDREW KUBENK

Andrew Kubenk is a financial strategist with Wisdom. Andrew has previously worked as a strategist with Investor Loans Network and spent 4 years as an Executive Manager with the Commonwealth Bank. As a result of his extensive employment history he will be in a position to share with us the difference between liaising with a mortgage broker or going straight to your bank.

We have also asked Andrew to touch on the following topics:

- Is he seeing an impact on investors and home owners as result of APRA restricting the number of interest only home loans the banks can hold on their books?
- The impact that the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services sectors has had on lending and whether this may impact housing prices.
- What are you seeing in regards to with investors building, renovating, subdividing etc.
- Suburbs you would look to invest in and why.

Having heard Andrew speak I know him to be quite knowledgeable and open to questions.

So if you feel that you will gain from his talk or you have questions you would like him to address please ensure you attend our annual general meeting on Tuesday 7th August.

We will be providing nibbles and refreshments.

Look forward to seeing you all there.

Theo Balomenos

SOME IDEAS ON WATER BILLING DIRECT TO TENANCIES FROM JOHN AND RODNEY

Dear members, it is our intention to invite the Hon. David Speirs, member for Black, to be a guest speaker at one of our general meetings with the focus of discussion being the current water billing procedures that apply in South Australia. He is the minister for Environment and Water.

Some of the topics suggested are:

Suggest a similar mode of operation to gas and power, no customer, no usage therefore no charge. There is not any expense to SA Water if water is not being consumed or sewer being used.

The supply of water can be isolated either by an honour system as used by gas retailers or isolated in a manner preventing usage as in the supply of electricity.

In the case of gas supply, if the honour system is violated the meter is removed and the supply line capped.

This concept will increase the overhead expenses of SA Water but so be it, landlords have been carrying their debts for far too long and this method needs to change.

Not all supplies metered, tough, get them metered, shouldn't be the owners' or landlords' problem.

Sewer charges should be related to water consumption.

John Wyk and Rodney Webb

SMOKE ALARMS

I get a number of enquiries regarding the smoke alarm requirements in rental properties.

The information below was copied from

<http://www.mfw.sa.gov.au/site/safety>

Rodney Webb.

In South Australia, legislation is in place to make domestic smoke alarms compulsory for all residential buildings. In some situations the smoke alarms need to be interconnected.

Home owners are required, by Regulation 76B under the Development Act 1993, to install battery powered or hard-wired (240 volt mains powered) smoke alarms*.

* Houses built since 1 January 1995 must be equipped with hard-wired smoke alarms. All other houses must be equipped with at least replaceable battery powered smoke alarms. From 1 Feb 1998 when a house with replaceable battery powered smoke alarms is sold the new owner has six months to install alarms which are hard-wired to the 240 volt power supply or powered by 10 year life, non-replaceable, non-removable batteries.

Penalties apply for non-compliance.

In rented homes the owner of the property is responsible for the installation of working smoke alarms and must ensure that they are maintained. The minimum maintenance required under Australian Standard 1851 – 2012 is detailed in Smoke Alarm Servicing Schedule. This schedule, appropriately signed and dated, can be kept as a record of maintenance. The MFS recommends a more rigorous maintenance regime (see below “Maintenance of Smoke Alarms”) and suggests that more frequent maintenance instructions and responsibilities are included in leasing agreements as the responsibility of the tenant.

FIRE DETECTION SYSTEMS

In a large domestic dwelling, it is advantageous to have the domestic smoke alarms interfaced to a Residential Fire Alarm Indicator Panel. The occupants, and the Fire Service on their arrival, will then know exactly where the fire has been detected in the house.

Residential Fire Alarm Indicator Panels are also an advantage in lodging houses, blocks of flats or apartments.

Note: Residential alarms may only be used where the Building Code of Australia does not call for an Australian Standard 1670 system.

Some monitored security alarms are only equipped with smoke detectors. These detectors may not comply with AS 3786 (Smoke Alarms) and therefore may not comply with Regulation 76B of the Development Regulations 2008 or the Building Code of Australia. Where a monitored security system with non-compliant smoke detectors is installed, owners need to install one or more smoke alarms that are AS 3786 compliant.

SMOKE ALARMS FOR IMPAIRED PERSONS

For those who are deaf or hard of hearing, there are smoke alarm systems available that incorporate strobe lights and vibrating elements in addition to the audible alert signal.

If you are dependent on others for movement (e.g. paraplegic), a smoke alarm system may be interfaced with equipment that will send a pre-recorded message or signal to the service provider so that the fire service and a designated carer can be immediately notified to respond.

POWER SUPPLY OPTIONS

Hard wired - 240 volt power supply with battery backup

Battery Operated - Replaceable battery with low power warning signal

Lithium Battery - Built in, non-replaceable, non-removable battery with a 10 year life

Interfaced with Domestic Security System – Some smoke alarms are connected via a domestic security system. It is critical that the smoke alarms in such a system are AS 3786 compliant.

INSTALLATION

Legislation requires that a qualified electrician install hard-wired (240 volt) smoke alarms.

Battery-powered alarms may be installed by the householder, carefully following the manufacturer’s instructions.

MAINTENANCE OF SMOKE ALARMS

The maintenance of domestic smoke alarms is covered by Australian Standard 1851-2012 which states that the maintenance of smoke alarms may be carried out by the occupant in accordance with the manufacturer’s recommended procedure and need not be recorded.

Australian Standard 1851-2012 recommends a minimum standard for maintenance procedures. The MFS recommends more frequent maintenance in some instances to ensure that smoke alarms operate at their maximum efficiency.

Changing the battery

Change the battery once a year or if a ‘battery low’ warning ‘beep’ is emitted. Ensure that the appropriate battery is used for the smoke alarm you have installed. (Refer to the manufacturer’s instructions.)

It is strongly recommended that batteries are changed each year. An ideal time to do this is when you change your clocks back at the end of daylight saving.

Change your clock; change your smoke alarm batteries.

Testing smoke alarms

Press the test button once a month, and when you return from an extended absence, to ensure that the smoke alarm is working. Test the backup battery of a hard-wired (240 volt) alarm by isolating the power supply (main switch or circuit breaker) before pushing the test button.

If the smoke alarms are interconnected make sure that the interconnected smoke alarms also sound when you press the test button.

To test the alarms which are connected to a security system, refer to the owner instruction manual or follow the testing advice which is displayed on the control panel.

Cleaning smoke alarms

At least every six months, remove dust, lint or cobwebs from the outside of the alarm using the soft brush attachment of your vacuum cleaner. Any other cleaning should be done in accordance with the manufacturer's instructions. Test the alarm after cleaning.

Replacing smoke alarms – life expectancy

All smoke alarms that comply with AS 3786 have a recommended service life of 10 years under normal operating conditions. After that time smoke alarms may malfunction and their efficiency may be compromised with accumulated dust, insects, airborne contaminants and corrosion of electrical circuitry. They should be replaced at least every 10 years. The MFS strongly recommends they should be replaced with hard wired, interconnected (240v) photo-electric smoke alarms.

The limited lifespan of smoke alarms applies to ALL smoke alarms regardless of power source (battery or 240 volt) or the type of smoke alarm (ionisation or photo-electric/photo-optical).

Ionisation smoke alarms contain a minute particle of radioactive material. (Ionisation type smoke alarms can be identified by the black and yellow radiation symbol which appears on the smoke alarm casing.) An exemption under the Radiation Protection Control Act 1982 permits up to two domestic ionisation smoke alarms to be disposed

into domestic waste during any period of seven days. For more information go to the EPA website at: <http://www.epa.sa.gov.au/> and search 'smoke alarms'.

Old photo-electric smoke alarms (no radiation symbol) can be discarded with normal domestic rubbish.

SUPER OPPORTUNITY FOR FIRST HOME BUYERS

July 2018

Eligible first home buyers can save for their deposit in the concessionally taxed superannuation system, using the First Home Super Saver Scheme (FHSSS or scheme).

If you qualify, this scheme may help you accumulate a larger deposit when compared to saving outside super.

The Government has produced an online estimator you may use to explore the potential benefits of the scheme. It compares making pre-tax super contributions with saving the same amount (less tax at personal rates) in a standard deposit account.

The estimator can be found at www.budget.gov.au/estimator/

Key dates

Contributions made to the scheme from 1 July 2017 can be withdrawn from 1 July 2018.

What and how much can you contribute?

Only voluntary contributions you make to super will count towards your FHSSS balance.

Voluntary contributions include personal, salary sacrifice and additional employer contributions, but not compulsory employer contributions (such as Superannuation Guarantee) and certain other amounts.

Voluntary contributions are limited to \$15,000 per year and a total of \$30,000. These contributions also count towards the existing contribution caps.

How much and when can you withdraw?

Withdrawals are capped at \$30,000 plus associated earnings. The Australian Taxation Office (ATO) will calculate the associated earnings based on a formula, not the actual earning rate. They will also determine the amount that can be released after allowing for applicable taxes.

You can withdraw from the scheme before you have found a place to buy, but you'll need to buy within 12 months of withdrawing. If not, the ATO may grant a 12 month extension.

Who can participate?

To participate in the scheme, you generally need to be aged 18 or over, have not used the scheme before and have never owned real property in Australia. You may still be eligible if you plan to purchase a home with a partner who doesn't meet the criteria.

What can you buy?

You must buy a 'residential premises' with any amount withdrawn using the FHSSS. This includes vacant land if you're planning to build. The premises has to become your home (not an investment property) and you need to occupy it for at least six months after you buy or build it.

What happens if you don't buy?

If you don't buy within the required timeframe, you can contribute the released amount back into super or keep the money and pay tax equal to 20% of the assessable amount.

Could you benefit from the FHSSS?

We can help determine whether saving for a home deposit using the FHSSS is a suitable option for you and assess other options.

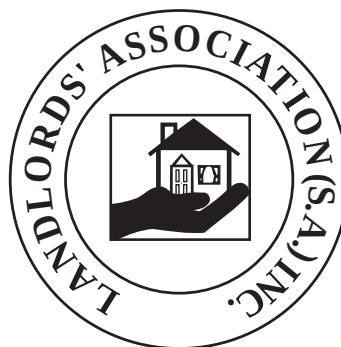
Important information and disclaimer

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Any advice in this publication is of a general nature only and has not been tailored to your personal circumstances. Accordingly, reliance should not be placed on the information contained in this document as the basis for making any financial investment, insurance or other decision. Please seek personal advice prior to acting on this information.

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Any general tax information provided in this publication is intended as a guide only and is based on our general understanding of taxation laws. It is not intended to be a substitute for specialised taxation advice or an assessment of your liabilities, obligations or claim entitlements that arise, or could arise, under taxation law, and we recommend you consult with a registered tax agent.



In a legal first, a New Zealand landlord has been awarded the profits earned by a tenant illegally sub-leasing a rental property on Airbnb.

The ruling sets a legal precedent which could open the door to a rash of similar cases and have wide-reaching consequences for Australia and across the world.

The tenant had sub-leased his rented Bellagio Apartment in central Wellington at least 54 times over a six-month period, making more than \$12,450 in revenue.

The Residential Tenancies Act does not specifically allow for landlords to recover profits earned by a tenant through sub-leasing, even when it's in breach of their Tenancy Agreement, and lawyers believe the case is the first nationally to result in such a ruling.

Keith Powell of Nice Place Property Management was asked to take over management of the apartment after its owner became suspicious that it was being sub-leased. Mr Powell had successfully pursued another case involving Airbnb in the Tenancy Tribunal.

He contacted the tenant to address the breach and the tenant then stopped all rent payments and abandoned the apartment. Mr Powell said in his 13 years of property management he had never seen such a blatant breach of the Tenancy Agreement. "It's unusual to see the Tenancy Agreement explicitly state that sub-leasing on Airbnb is prohibited," he said.

"So, finding that in just six months the tenant had done so on at least 54 separate occasions, missed rent, installed a dead bolt on the door and then disappeared, you've got to wonder what was going on."

Shehan Gunatunga from Morrison Kent Lawyers representing Mr Powell successfully sought an "account of profits" by demonstrating it was unreasonable to allow the tenant to profit from a breach of the tenancy agreement.

The Tribunal found the landlord could recover the profits from the sub-leasing activity.

Morrison Kent in Wellington believes this to be the first time an "account of profits" has been allowed under these circumstances in New Zealand. Mr Gunatunga said the case provides some reassurance for landlords when it comes to such breaches.

"Being able to recover the profits from the sub-leasing activity sets a precedent, meaning there is now a legal basis for seeking that the profits be paid to an aggrieved landlord where a tenant sublets their rental property in breach of the tenancy agreement," he said.

"This adds another layer of protection in situations of sub-leasing, which is becoming much easier for tenants to do."

In addition to the profits from sub-leasing the apartment on Airbnb, the tenant was also ordered to pay unpaid rent, exemplary damages for abandonment, sub-leasing and replacing locks, as well as costs for door replacement.

LANDLORDS' ASSOCIATION (S.A.) INC.

Financial Statement of Income and Expenditure

For the Period July 1st 2017 until June 30th 2018

Prepared by Patricia WEBB Treasurer for period

INVESTMENT ACCOUNT TERM DEPOSIT AS AT June 30th 2017	\$50,000.00
Interest from Investment paid in on Feb & March 16th 2018	\$1,294.26
Transfer in from Cheque Account	\$3,705.74

\$55,000.00

INCOME for July up until 30th June - YEAR 2017-2018

MEMBER RENEWALS FOR 2017-2018	\$6,640.00
MEMBER RENEWALS FOR 2018-2019	\$8,880.00
NEW MEMBERS	\$1,300.00
NEWSLETTER ADVERTISING	\$275.00

\$17,095.00

LESS EXPENDITURE for July up until 31st March - YEAR 2017-2018

Gifts for Speakers	\$89.40
Insurance - Professional Indemnity	\$737.60
Insurance - Public Liability	\$769.60
Insurance of Voluntary Workers	\$580.09
Meeting costs	\$394.23
Merchant fees	\$163.49
Newsletter Printing	\$2,191.00
P O Box Cost	\$287.00
Photo copying	\$40.00
Postage of Newsletter	\$803.00
Rental Office & Amenities	\$6,357.67
Stationery	\$237.00
Telephone Calls, Reimbursements	\$21.61
II NetPhone, Mobile Fax Phone.	\$1,019.48
Travel Reimburse. & Parking Fees	\$126.56
Website Maintenance & Part New Construction	\$2,880.00
Transfer to Invest Account	\$3,705.74
Refund of Overpayment made in June 2016-17	\$300.00

\$20,703.47

CHQ ACC BAL BROUGHT FORWARD FROM 30th JUNE 2017 ACTUAL BAL	\$18,021.45
INCOME FOR 2017/18	\$17,095.00
EXPENDITURE 2017/18	\$20,703.47

CHEQUE ACCOUNT BALANCE AS AT

\$14,412.98

INVESTMENT ACCOUNT BALANCE AS AT TODAY

\$55,000.00

TOTAL ACCOUNTS

\$69,412.98



Justice Judy Hughes

President

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Adelaide SA 5001

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6 June 2018

SACAT decision relating to tenancies matters involving parties who are residents in different states

On 5 June 2018, the Tribunal determined, in a case called *Raschke v Firinauskas*, that the Tribunal is not entitled to decide a case under the Residential Tenancies Act between a landlord who was resident in Victoria and tenants who are resident in South Australia.

In the decision, the Tribunal determined that it lacked the jurisdiction to hear and decide the case because the Tribunal is not a court and is not authorised to make decisions involving cases between residents of different states. This follows a decision of the High Court in *Burns v Corbett* which decided that the NSW equivalent of SACAT (NCAT) could not decide an anti-discrimination case between parties who are residents in different states. The High Court considered that the Commonwealth Constitution only permits particular types of courts to decide such cases. Decisions of the High Court are binding on all courts and tribunals in Australia.

Raschke v Firinauskas involved an application for vacant possession by the landlord, but the principles in the decision apply to other types of tenancies cases. The effect of the decision is that the Tribunal cannot decide any disputes between landlords and tenants under that Act where one party is an interstate resident. This includes cases that are decided by conciliation or where the parties achieve an agreed outcome and seek to have that written in a Tribunal order.

It does not set out whether the Tribunal can hear other sorts of applications and disputes between residents of different states under different laws. For example, it has not been shown that guardianship and administration cases, or reviews of decisions by Government agencies, are affected.

The question of whether the landlord or the tenant (usually the landlord) is a resident of another state may not be straightforward. Usually some degree of permanency will be required to be shown before a person can be shown to be a resident of a different state. If the Tribunal considers that a dispute may involve residents of different states it will tell the parties before the hearing so that they are ready to address this at a preliminary hearing. The Tribunal will endeavour to do that quickly for parties.

If the Tribunal is not entitled to hear a case, the parties must find a different way to resolve their dispute. They may be able to reach a settlement and SACAT's website provides some guidance on that. They may be able to use the courts to seek a determination about their rights.

SACAT understands that the Government is actively considering ways it can assist parties who find themselves unable to have SACAT hear their matter. Until a longer-term solution is identified, the

Tribunal may refund application fees where it appears that one of the parties may be an interstate resident and the Tribunal conducts a preliminary hearing and determines that it cannot hear the matter.

It may be that the Government or one of the parties appeals the decision in *Raschke v Firinauskas* in which case a court will decide whether the Tribunal's decision is correct or not.

Current cases that are part-way through being decided may be affected. If a matter has been adjourned pending the outcome of the decision in *Raschke v Firinauskas* and the parties have been unable to resolve that dispute without the Tribunal, then the applicant should request another hearing so that:

1. The application can be dismissed which may be necessary for it to be determined elsewhere; and
2. The application fee can be refunded.

In summary:

- Until established otherwise, only tenancies matters are affected
- Only matters involving a party who is an interstate resident are affected
- The Tribunal can decide whether a person is a resident of another state
- The Tribunal does not have the power to make orders in relation to affected cases
- SACAT understands that the Government is working on a solution to ensure that parties in affected cases can resolve their disputes in a way that is similar to the way that was, until this decision, occurring.



Justice Judy Hughes
President
South Australian Civil and Administrative Tribunal

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CLOSING DATE FOR NOVEMBER 2018 NEWSLETTER

Saturday 29th September 2018

ARTICLES, ANNOUNCEMENTS
& OTHER MATERIAL

Please send to:

The Editor
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 GPO Box 2486 Adelaide SA 5001
 or Email to: lasa.info@landlords.org.au

*An annual prize will be awarded for the best
original article*

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for the Newsletter could be sent by email wherever
possible to save typing.

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FUTURE MEETING DATES

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*Guest landlords are always welcome
Please mention if this is your first attendance*

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