RESIDENTIAL TENANCIES (DATABASES) AMENDMENT BILL

Introduction and First Reading

The Hon. D.G.E. HOOD (17:36): Obtained leave and introduced a bill for an act to amend the Residential Tenancies Act 1995. Read a first time.

Second Reading

The Hon. D.G.E. HOOD (17:37): I move:

That this bill be now read a second time.

I rise to introduce the Residential Tenancies (Databases) Amendment Bill. This bill has come about through numerous circumstances, which I will explain momentarily, but predominantly from significant complaints that I have received regarding the operation of the now defunct Residential Tenancies Tribunal and complaints that I continue to get in my office, I should say more specifically, about its success at the SACAT. For members' reference throughout the speech I will refer to examples mostly regarding the Residential Tenancies Tribunal; however, I am hearing the same sorts of complaints about SACAT, the new organisation, the new arrangements for these types of tribunal issues.

This bill that I am introducing alters the criteria for when somebody can be placed on what is colloquially called the TICA database, that is, the database which records problematic tenants, in essence. This bill goes a fair way, I believe, and it actually creates a fair way in which we can begin to protect owners in the properties while still allowing tenants protections and oversight in cases of unfair or overzealous agents and owners.

As I have said in this chamber recently, the reliance upon the rental market is increasing. The recent Senate inquiry into housing affordability stated that we need to move away from the notion that rental properties are short-term accommodation, because the reality is that fewer people are able to enter the property market and many will remain lifelong renters. That is the situation that Australia now finds itself in, largely or at least partially as a result of planning policies which restrict the availability of land, quite relevant what we have been doing this week.

What we therefore need is to foster a tenancy environment where owners have rights over their property and also tenants have security and rights as well. When someone damages or refuses to pay rent towards the use of a property, the owner needs appropriate safeguards to ensure their interests are protected. I do not think anyone would disagree with that.

In a recent *Today Tonight* interview, which aired back in February, so relatively recent, a homeowner by the name of Tracy Coad aired her concern with how the system works, that is, how the SACAT system works at the moment. She says:

Any rights that the landlord had , ha s been taken away and I just feel helpless. T here is nothing left . We are in a situation where you can't protect your property.

I think we need to listen carefully to landlords when they speak in those terms. This is a lady who has invested a significant portion of her life savings into a property to provide housing for the community and yet, in her own words, she feels helpless and there is actually no way of protecting her property. It is not right and I believe it is untenable.

To give perspective to the financial investment that is home ownership these days, one need only look to the recent data. In June 2015, the median house price for metropolitan Adelaide was $428,250—not an insignificant sum by any means. A mortgage of this amount with the ANZ bank—I picked one at random—according to their online calculator attracts a repayment amount of approximately $2,290 per month.

The Australian Bureau of Statistics in May 2015 reported that the average total weekly earning for a South Australian who worked full time was $1,397.80. Therefore, a mortgage on a median price metropolitan Adelaide house equates to approximately 38 per cent of a person's average total weekly earnings. It is a very high percentage, and therefore you can imagine how difficult that is for particularly low-income earners to ever buy a house at all. Hence the increasing importance of rental properties being available and, I might say, the service that landlords provide; it is sometimes underestimated.

Yes, they are making money out of it, and yes, they are acting out of self-interest, but out of that self-interest they are also providing accommodation for people who otherwise simply may not have any or, if they did, it may be substandard or an arrangement that does not suit them. Landlords provide choice and they provide suitable arrangements for people to put a decent roof over their head.

A home is an enormous investment for the average person. Our laws and the enforcement of those laws should provide the appropriate protection to an owner's investment. We believe this bill is the first step in providing owners with the peace of mind that they deserve. This is, of course, a delicate balancing act that is required to weigh the rights and expectations of tenants and owners, and I think that is a well-established balance.

As I recall in the 2013 debate on residential tenancies, it was widely noted that the rights of the tenant were disproportionately weighted against and to the detriment of owners. This is something that this chamber has had substantial debate about, and there have obviously been varying opinions across the board, which I think is completely healthy and appropriate. These things need to be debated properly, and I think the debate on that particular bill in this chamber was an example of exactly that.

Many in this chamber expressed hope that the Residential Tenancies (Miscellaneous) Bill would bring that necessary balance, but from correspondence I have received from agents and landlords, certainly in their view that has not occurred, and I must say I am inclined to agree.

Before I continue outlining the changes I am proposing under this bill that I am putting before the chamber this evening, I want to place on record the reason why I believe these changes are necessary, and I will outline some of the concerns that have been raised in doing so.

I think a good example of that occurred in a *Today Tonight* interview in February this year, where property manager Mark Leslie, who owns a large property management business, described an application to the tribunal, to SACAT, claiming unpaid rent and water debts. This particular individual had substantial unpaid rent. To be honest, I cannot recall the exact amount, but it was a substantial amount, and then water bills that were unpaid as well.

Remarkably, after he had gone through the process, lodged the appropriate forms, treated everyone with the appropriate respect, etc., even though clearly the landlord had done nothing wrong and the tenant was in clear breach—there was no dispute—of the rental agreement that they had with the landlord, he was told that the landlord would have to compromise, despite the fact that they were legally 100 per cent in the right position. So, essentially, the owner (that is, the landlord) was told to cover the costs of someone else's living expenses—that is, their water bills. For many mum and dad investors, if you will, they simply cannot afford this impost.

To Family First, this is unacceptable. It is simply unfair. Why should a landlord be made to cover the costs of someone else's living expenses when they have absolutely complied with the law in every way? That was even agreed to by the tribunal; the tribunal stated they had done nothing wrong. Why should they therefore be compelled out of some act of compromise or meeting in the middle to pay someone's water bills? They are essentially paying for someone else's living expenses, and that just is not right.

In general, agents attempt to recoup the moneys owed to their landlords via the tribunal. However, as I have just outlined, and as I am told in other cases, when orders are made in favour of the owner they usually fall significantly short of the actual debt owed. I have sat in on the tribunal myself in order to see it in action, as I did not wish to talk about something I had not experienced. I have seen very favourable rulings towards very difficult tenants, rather than what I would consider fair and reasonable rulings that one might expect of a so-called independent arbiter.

It is not hard to see why many would accuse the tribunal of being, in their words, another arm of welfare. It is just not right. In a situation where a landlord ticks all the boxes, makes sure that their house is in good order and that they are fulfilling their end of the bargain, it is not unreasonable to expect the tenant to fulfil their end of the bargain as well. When something does go wrong, they should be able to go to the independent umpire and say, 'Look, the tenant has not met their requirements under the agreement.' I think most people would reasonably expect that the tenants would have to foot the bill. That is not what is happening, by and large; in some cases it does, and in a lot of cases it does not.

As I understand it, the process is that the landlord issues a notice when there is a breach of the act. The first notice cannot be served until a tenant is at least 15 days behind in the rent, so they are already just over two weeks behind before they can even issue a notice. Then an owner or an agent—that is, a landlord or an agent—can apply to the tribunal for a hearing. There are several listing delays at the tribunal, which can add anywhere up to four or five weeks and sometimes more (I have heard of cases where it has been up to seven weeks before they actually get a hearing), and then typically the tenant is given somewhere in the order of seven days from the tribunal appearance before they are evicted, assuming, of course, that they do not appeal the decision which, if they do, prolongs the process even more.

All the while during this process, it is actually costing the owners money because they get to a stage where they are about six, seven or eight weeks, depending on the actual time frame and the specific circumstances, out of pocket because they have not received rent for that entire time. Usually, a bond is for four weeks, so even if they are awarded a bond (which is no certainty in my experience), they will get their four weeks. In some cases, it can be five or six weeks, but generally they will get their four weeks, and they are out of pocket automatically just through the standard process, even if the process flows exactly as it should.

That is an unacceptable situation for landlords. I am talking about a model landlord here who does the right thing, and I accept that they are not all like that. When the landlord plays by the rules, ticks all the boxes and does the right thing, I think they have a reasonable expectation to come out of the process not out of pocket, yet the way the system works in its normal way of working—and this is the point I want to make, that this is not exceptional—often sees a good landlord out of pocket.

The government has been explicit that they do not consider that costs incurred during this process should be recoverable by the successful party to applications under the SACAT model, but again this becomes yet another unjust cost the owner is ultimately being required to cover due to the poor tenants and the tenants not playing by the rules, if you like.

I will just give members some insight into the TICA database. Essentially, it is a database that a tenant's name is listed on and then comments can be made about that individual tenant. This database operates now, it is nothing new, it is not something I am inventing in this bill and it works at the moment, but in a moment I will get to what I would like to see changed on it. If the TICA database worked properly, I believe that it would prevent a lot of these issues from arising and certainly limit the number of applications being made to SACAT. It would be a good thing for SACAT. They are overwhelmed with the number of cases being presented to them, so it would be a good thing from the administrator's point of view as well, but it would also, I believe, create greater fairness for the landlords.

Given the increasing reliance upon rental properties, we need to give serious consideration to protecting the rights of landlords, otherwise we may simply lose some of our much needed rental properties from the system as owners give up on the system which can, in some cases, severely let them down. I think it is important for the chamber to consider the consequences of something like that happening.

If we had a situation where landlords decided that owning a rental property and renting it out to individual tenants was just too hard, the risk was too high, the chance of recovering their costs was too low, that it is essentially not worth the trouble, then the logical move for that individual landlord is to decide that they will no longer offer a property for rent. They will sell up their property or properties and decide to invest their money elsewhere. They may invest in commercial property perhaps, they may decide to go into the share market, there is a whole lot of things they can do with those funds, whether it is borrowed money or not.

Of course, the significance from a social aspect would be the impact on the housing stock available. We would see a decline on rental housing available and we know from past experience when rental stock decreases, the weekly rent averages increase; that is, it costs more to rent the same house when there are fewer of them available. It is a simple fact of supply and demand. I believe if we do not fix one of the problems, being the TICA database, which I will outline in a moment—if we do not fix this problem and if we do not create a situation that has a good balance between landlords and tenants, then we run the risk of a reduced supply of rental properties which would be tragic. Quite simply, it would price a lot of people out of the market. We would see increased homelessness, we would see terrible social consequences. Again, to restate it, I think it can be underestimated the social good that landlords provide by making available rental properties.

The Residential Tenancies (Miscellaneous) Amendment Bill inserted—and this is the one we dealt with a couple of years ago—the residential databases part 5A provisions which dictates when a person can be listed on the national database. The industry experts who have contacted me say that it is incredibly difficult to list bad tenants on the TICA database. It should not be so, but it is. The notion behind listing a bad tenant on the database is twofold. It can act as a deterrent to tenants to behave in a way which would get them essentially blacklisted from future tenancies, but also provides an important service by way of notice to future landlords that this person has caused damage or failed to pay the rent under a previous tenancy.

This is an important safeguard for landlords as it allows them to better vet their future tenants and thus protect their valuable assets which are often heavily mortgaged. We need to ensure that agents are able to appropriately use this database to convey timely information to other agents about the tenants that they have had renting from their properties. The original intention behind listing tenants on the database was to alert new agents and landlords to the attributes of the tenants, whether they be good or bad, so that an informed decision can be made as to whether or not to grant tenancy to that individual when they apply to rent their property.

Effectively the database was intended to be used as a referral system, thereby streamlining the application process for those applicants with a rental history and eliminating the need to place calls to past agents which is what happens at the moment and is not supposed to if this database worked properly. For example, where an agent had a reliable tenant, they would list them as highly recommended or, where the tenant caused damage to the property, they would note the damage on the database so that a future agent or an agent who has an application from that individual could simply go to the database, have a look and see that they paid their rent on time, kept the property in good order and say, 'Terrific! We will have them.' Alternatively, they will see that, no, they left the property in disarray and did not pay the rent and say, 'No, we do not want them to rent,' and it would be a pretty simple thing.

The incarnation of the TICA database that we have now falls well short of this ideal approach, and I hope this is something the government will commit to investigating more fully in due course, especially as it has the potential to ease the burden on SACAT. As I said, I think it is a win for government as well. For an agent to list a tenant on the TICA database at the moment, they must fulfil the elements of section 99F of the Residential Tenancies Act. From the advice I have received from agents, the tribunal has been interpreting the words 'has ended' in section 99F(1)—and this is referring to the end of their tenancy—to mean that the tenant is no longer residing at the premises as opposed to the lease ending due to a material breach, and I will explain that in a little more detail if that is confusing for members in a moment.

The problem with the current interpretation of the provisions, that is interpreting it that their lease has to have ended, is that tenants who damage properties and/or break leases then move into a new property well and truly—and this is the key point—before the landlord is able to list the tenant on the database. So a tenant, who has somehow avoided paying rent for months, can then move to the next unsuspecting landlord and repeat the same behaviour without any real consequences and with the new landlord being informed in a timely manner.

I guess the key point there, just to go through that in a little bit of detail in the few minutes that we have until we break for dinner, is that fundamentally how the TICA database works now is that an individual tenant is not able to be listed on the database, first of all for any good that they do—that has been excluded. They should able to be listed on there if they have been a good tenant, for example; why not create a situation where their good tenancy can be recognised so that other landlords can be keen to even offer them a rental discount, perhaps, to have them rent the house.

At the moment, how it works is that a tenant can only be listed on the TICA database once the tenancy has ended; that is, once they have left the house. The problem is that they are usually in a new house by then and so the new landlord considering this individual tenant as a tenant in their property does not have the opportunity to refer to the TICA database to see if they are actually suitable to have as a tenant in their place.

The interpretation that has been carried over at the moment, the way the whole situation works, leads to a situation where agents, and therefore owners, are not alerted to the dangers of their potential new tenant prior to the signing of a new lease. They have already signed the lease when they become aware that they have just signed up a bad tenant. Owners are therefore denied this sensible safeguard for their investment, despite having a system in place which can actually fix it.

It is an absurd situation. Agents should be able to place tenants on the database at any time during their tenancy, in my view, if they have failed to repair a damaged property or failed to pay their rent. Equally, they should be able to put them on there if they have done the right thing, which would help them in their future, no doubt.

This bill provides that a person who is named as a tenant in a residential tenancy agreement, who has breached the lease and the breach (1) has resulted in the person owing the landlord more than the bond for the tenancy, (2) has resulted in the tribunal terminating the tenancy or (3) has been given an s80 notice of termination which has not been remedied, may be listed on the TICA database.

Simply, in the last few minutes that I have, these are the three ways that somebody will be listed on the TICA database. Just to go through them again: somebody has basically left the property owing the landlord more than the bond; or they have had their tenancy terminated for one reason or another; or they have been given an s80 notice, which is a similar thing. Under those three circumstances, they can be listed on the TICA database.

This bill provides a review power, whereby an aggrieved person may apply to SACAT to review the listing. That is, there is a right of appeal, if you like. SACAT can then order the operator to amend or remove the listing if they are satisfied that the breach was not sufficiently serious to justify termination. I believe this is an appropriate protection to ensure that tenants' rights are duly weighted against the rights of owners and landlords, and indeed future landlords for that individual. It also provides a protection against agents who may be overzealous in their listing of tenants as well. I think it strikes the right balance, is the point.

This amendment does not bring TICA in line with its original design. As I mentioned, you should be able to list good tenants on a TICA database and explain why they have been good tenants. As I said, I have asked the government to consider that option more thoroughly in due course. However, it does provide better outcomes for agents and owners in the screening of potential tenants. It is more timely; that is the point.

Whilst the bill does not cover the issue of domestic violence, I need to mention that I note there is protection provided for those affected by the domestic violence provision within the yet to be finalised Residential Tenancies (Domestic Violence Protections) Amendment Bill that we passed earlier this year. That bill created a 99F(1)(e) provision, which allows a tribunal to make an order preventing the listing of a person on the database due to domestic violence issues where appropriate.

In conclusion, an agent needs to be able to justify their listing should the matter be referred to SACAT, and under the current act an unauthorised listing carries a $5,000 fine. Placing a tenant on the TICA database is not something an agent does lightly, and nor should it be. They would then be subject to a fine if they did it incorrectly or maliciously. That being said, listing poor tenants on the TICA database is the appropriate protection of an innocent and unsuspecting future landlord and agent. Why shouldn't they have that information available to them when they are leasing their very expensive asset to an individual?

This bill goes some way to balancing the rights of the tenants and the landlord, and it provides an additional layer of protection for landlords. I strongly believe that we need to create better protection for landlords, owners and agents. Ensuring that our landlords and owners are protected by tenancy laws is just as important as protecting those who are tenants. I support both of them. Industry has asked for this bill, and I believe that it is a reasonable and necessary change. I guess at one minute to six it is probably a good time to end, but I expect that this is something to be done relatively quickly, relatively easily. I suspect that it will have broad support; I certainly hope so and I commend the bill to the house.

Debate adjourned on motion of Hon. J.M. Gazzola .

Sitting suspended from 18:00 to 19:45.