

Comments on Residential Tenancies (databases) Amendment Bill

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.

Not only are landlords providing accommodation, they are also trying to provide an income for themselves in order not to be a burden on the welfare system in future years.

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 many cases the tenant is rewarded ie the tenant forfeits the Housing SA bond and then they may receive another one. These bad tenants move on accepting no responsibility for their actions or debts. If the landlord does something wrong eg providing substandard housing, a HIA order may be placed on their property and the rent adjusted. This is rightly so however when the landlord is at fault there is a consequence; when the tenant is at fault, it is just bad luck for the landlord.

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.

On a personal note, this year I had a tenant that had substantial rent and water arrears. I felt sorry for her and allowed her many excuses until I found out that she did have money for her vices. The tenant was clearly in breach of the tenancy agreement yet I had to pay the SACAT application fee and then wait six and half weeks for a hearing. Not only are these tenants taking advantage of their landlord but they are also taking advantage of taxpayers. They receive various allowances eg rent allowance that is not used for the intended purpose.

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.

Agree, there are some very good tenants who deserve praise and adding them to a database will help them with future endeavours.

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.

(1) By the time the rent arrears and/or water arrears are more than the bond the landlord/agent has already made an application for vacant possession and is waiting for the hearing date which may take up to six weeks or more. In this case the tenant should be listed on the TICA database as soon as possible, not after SACAT has made a determination and/or granted vacant possession.

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.

Does the provision also protect the perpetrator ie prevent the listing of a perpetrator on a database.

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?

Does TICA have guidelines for listing bad tenants so that a listing cannot be malicious but based on facts.