

LANDLORDS NEWS

VOLUME 170

May 2020

GENERAL MEETING

**Tuesday
5th May 2020
HAS BEEN
CANCELLED**

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

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

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COVID-19

**DUE TO THE COVID-19 RESTRICTIONS
THE 5TH OF MAY GENERAL MEETING
HAS BEEN CANCELLED**

GENERAL MEETING GUEST SPEAKER

**Guest speaker:
Due to COVID-19, there is no meeting this month.**

What the Agenda was going to be

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

COVID-19 UPDATE

The situation with COVID-19 has presented CBS with unprecedented changes and we thank you for your continued understanding and support.

To ensure the safety of the community and our staff we respectfully request that where possible you post all bond applications/forms to us at GPO BOX 965 Adelaide SA 5001 or use Residential Bonds Online.

We will continue to provide you with relevant updates as further information comes to hand through our online channels as we work through this challenge together.

WELCOME TO OUR NEW MEMBERS

Mr Luciano GUGLIELMIN
Mr Martin RUSH
Mr Keith WESTERGAARD

Welcome back to:
Mr John HROMIS

COVID-19 – MORATORIUM ON EVICTIONS

I have been answering calls on the Landlords' Association (S.A.) Inc. mobile phone and not surprisingly there have recently been a lot of queries relating to the Government's proposed moratorium on evictions.

The Government's proposal addresses both commercial and residential tenancies.

Whilst the Landlords' Association (S.A.) Inc. is an organisation for Residential landlords, I'll first briefly cover the situation in respect of Commercial Tenancies.

The impact of the Government's response to Covid 19 has at this stage, had a serious impact on many commercial tenancies. There has been the forced closure of many businesses. Restrictions by way of social distancing have impacted many others. This has resulted in a reduction of businesses turnover, whether reducing it to zero as in the case of pubs, beauty salons etc. or some lesser impact in the case of restaurants, hairdressers etc.

My understanding is that in the interests of sharing the pain, Landlords are to reduce the rent by the same proportion as the businesses turnover has reduced. This is by way of a deferral of that rent, however it is expected that 50% of that reduction is to be waived. The balance is to be repaid over no less than 24 months. The process should be one of negotiation between landlord and tenant. These rules apply to businesses with a turnover of less than \$50m per annum.

Turning now to Residential Tenancies. In SA there is a moratorium on evictions for the duration of the emergency where the cause of non-payment of rent is due to severe financial hardship as a result of the corona virus.

It is expected that in these situations the landlord and tenant will negotiate an arrangement, perhaps a reduction or temporary deferral/waiver of rent. If an agreement between landlord and tenant is reached it is good practice to record the agreement and make application to SACAT for a consent order.

Where agreement can't be reached the matter can be referred to SACAT for a decision. As yet it is unclear to how this is to be done.

What follows are general comments on this matter;

1. In general rent under the tenancy agreement should continue to be paid. Where the tenant has been severely impacted by Covid 19 the tenant should approach the landlord to negotiate an arrangement. The moratorium on evictions does not apply to tenants who have not been financially affected by Covid 19.
2. I would suggest that if you as a landlord are approached by your tenant you should consider the tenant's circumstances. What income have they lost? Can they qualify for the Jobseeker payment, or perhaps even the JobKeeper payment through their employer? In these sorts of cases perhaps a deferral of rent to cover the time for these payments to come through is appropriate. In other situations where the tenant was previously on a high income which will be greatly reduced perhaps a longer period of deferral is warranted. Unfortunately none of us know how for long the situation will continue so perhaps err on the side of caution and make deferral/reduction either for a fixed period of

say a month at a time or alternatively link it to a point of increase in the tenant's income. Whilst it may be cumbersome an application for a consent order by SACAT should be considered to protect your interests in all of these situations.

3. Where a tenant simply stops payment of rent, I suggest that the usual practice of issuing a form 2 and application to SACAT should be followed – I have in the last week or so had a SACAT hearing of a case such as this. Whereas prior to this situation I would have anticipated conditional orders in this case the Tribunal Member ordered a payment plan and the right to an urgent hearing if the plan was not complied with. The Member commented that if the tenant again did not attend the hearing then he would most likely order an eviction because he could not determine whether the non-payment was as a result of severe hardship caused by Covid 19.
4. Finally I suggest that the tenant should be asked to provide documentation to support their assertions and/or give consent to the landlord to confirm the tenant's circumstances with the employer.

Please make your own enquiries if you find yourself in this situation. Things are changing quickly so whilst every effort has been made to report the current rules accurately they may well change by the time this item goes to print. Secondly no two situations are identical so the best response in your situation may well be different from broad outline above.

John Wyk.

I regularly receive an email from Scott Pape, probably better known as The Barefoot Investor. He has a very "down to earth" approach with his responses to enquiring questioners. Check out his website, barefootinvestor.com as it is loaded with a wealth of valuable financial information.

The following text is some of what I received only a few days ago and he has kindly granted me permission to reproduce it, thank you Scott and thank you Melissa for your assistance as well.

Dear Rodney,

I picked a tough time to change careers:

Last year I went back to study so I could become a community-based financial counsellor.

In January I was sent off to help survivors on the bushfire frontlines.

It was the hardest thing I've ever done.

Then came corona.

Right now I find myself on the *financial* frontlines as a counsellor.

Let me tell you a couple of things I've learned from sitting across the table from people who are financially broken:

The first hour of the meeting is often a write-off. The client will tentatively sit down ... and then verbally vomit at me. Nothing makes sense.

That's because they're consumed by fear. They're ashamed about their situation. They feel out of control.

Understand this: no one makes good financial decisions when they're in a state of fear. No one. And, right now, a lot of people are consumed by fear. I can see it in the thousands of emails I'm getting each week.

They stay up late 'doom scrolling', which makes them worry about getting sick ... and dying.

Or they worry that the economy is going into a recession ... or a depression.

Will we be shut down till June? Or Christmas? Fear is debilitating. It freezes you up, and shuts you down.

So what's the antidote?

You need to take action ... alpaca style.

Let me explain (it's kind of weird):

A few years ago we inherited two alpacas, whose job it is to protect our lambs from foxes.

They're surly buggers ... they're basically camels without humps, and as aggro as Alan Jones.

When the bushfire came through our farm and burnt most of their flock, a ranger turned up the next day with a gun to finish off the wounded sheep.

The alpacas were wounded themselves. Their burnt hoofs made it hard for them to stand.

But they did.

They shielded their sheep. They stared down the barrel of a gun ... and charged at the freaked out ranger.

No one was messing with their flock!

And in a time of crisis, when you've lost your income, you need to do the same.

Every dollar you get should go first into protecting your flock:

You put food on the table.

You keep the lights, heating and internet on.

And you keep a roof over your head.

These are non-negotiables.

If you have money left over you can make repayments on other debts, but these are your priorities.

Here's how you do it:

First, work out how much your basic needs (above) realistically cost each week. Write down the figure. Second, go through your bank statements and cancel your direct debits and other non-essential payments.

Third, email your creditors, explain your situation, and request a payment extension.

You won't solve everything quickly, and you shouldn't expect to. That'll come later.

Right now, your only job is to protect your flock.

Tread Your Own Path!

SACAT - a couple of issues.

An article from John Wyk

As many of us do now, I conduct a number of business and personal activities on-line, including of course applications to SACAT.

As a regular applicant to SACAT I have registered and now log in with a user name and a login password.

Most other organisations with whom I am registered retain details to make it easier to complete business on-line.

SACAT appears to be an exception. Every time I lodge an application I still have to fill in every personal and address detail, remarkably including my name. Surely as a registered user these and other fields could be populated in the application form.

Along the same lines it seems bewildering to me that where an application relates to a previously heard case for the same tenant all documentation has to be provided afresh with each application. The lease, rent records, invoices for water, and stunningly even SACAT's previous order. They all have to be provided again before the application can be listed. Surely all these documents have been uploaded to SACAT's system and could be accessed by the Member with the click of a button.

Surely it's not that hard. Grocery stores and other retailers have a record of my purchases going back years.

I have a second concern also related to second and subsequent SACAT applications for the same tenancy.

Typically, when SACAT makes an order for a payment plan, depending on the amount of arrears conditional orders are attached to the first few payments, or alternatively the landlord can make application for an urgent hearing. Following that the order often allows a period of say 6 or 12 months for an application to SACAT without the need to serve a form 2 (if the tenant doesn't comply with the order). Finally the fee for any application relating to the tenant not complying with the order in future is waived.

I have had two applications in recent times to which the final part of the order applies. SACAT clerical staff have insisted that it is time limited and that I must pay the fee before the matter could be listed.

You are powerless so you pay the fee.

In the most recent case the member in fact commented upon that in the hearing but the matter wasn't pursued.

Below is a direct copy and paste of the earlier SACAT order from one of these cases. Please feel free to let me know if it appears to you that I have misread the final part of the order.

The tenant may remain in the property on condition the tenant pays to the landlord \$700.00 by 5.00pm on Friday 19 October 2018 and then pays the same amount on Friday of every fortnight until the rent is two weeks in advance and the amount of \$3,333.25 outstanding for water invoices is paid in full.

- 2. If the tenant misses any of the above payments before Saturday 8 December 2018 the landlord may make a written request to the Tribunal, including an up-to-date record of rent and water payments, for an urgent hearing to terminate the tenancy and evict the tenant.*
- 3. If the tenant misses any of the above payments between Saturday 8 December 2018 and the expiration of 12 months from the date of this order then the landlord may lodge an application seeking an order that the tenancy be terminated without first serving a notice of termination.*
- 4. The landlord must notify the tenant when the final payment due under this order has been made.*
- 5. There will be no fee payable for any application lodged with the Tribunal by the applicant where the application relates to the tenant's failure to make a payment required by this order.*

*Tribunal Member
17 October 2018*

ECONOMIC STIMULUS PACKAGE

It is a slow day in the small Saskatchewan town of Pumphandle, and streets are deserted. Times are tough, everybody is in debt, and everybody is living on credit.

A tourist visiting the area drives through town, stops at the motel, and lays a \$100 bill on the desk, saying he wants to inspect the rooms upstairs to pick one for the night.

As soon as he walks upstairs, the motel owner grabs the bill and runs next door to pay his debt to the butcher.

The butcher takes the \$100 and runs down the street to retire his debt to the pig farmer.

The pig farmer takes the \$100 and heads off to pay his bill to his supplier, the Co-op.

The guy at the Co-op takes the \$100 and runs to pay his debt to the local prostitute, who has also been facing hard times and has had to offer her "services" on credit.

The hooker rushes to the hotel and pays off her room bill with the hotel owner.

The hotel proprietor then places the \$100 back on the counter so the traveler will not suspect anything.

At that moment the traveler comes down the stairs, states that the rooms are not satisfactory, picks up the \$100 bill and leaves.

No one produced anything. No one earned anything... However, the whole town is now out of debt and now looks to the future with a lot more optimism.

And that, ladies and gentlemen, is how a Stimulus package works.

The following statement was in an unsigned email that was sent to most of our committee.

Hi, This moratorium on evictions is rubbish. Landlords are not a charity. Some can't wait to get rid of their tenant - who deserves to be evicted or not have their lease renewed.

Thanks

The comment prompted John to suggest that we/I try to word a brief response.

I'm not sure as to whether to respond to the sender or not but I could probably put my thoughts onto paper to try to get some perspective of the current business turmoil that we are all experiencing.

My wife and I own four properties that we rent to private renters under the requirements of the Residential Tenancies Act (1995). One rental went "pear shaped" just before the moratorium came into force resulting in the tenant leaving the premises owing us well over \$1,600 in rent arrears and unpaid water accounts. The restoration is going to

be expensive as a result of the breakages caused by unruly visitors and prolonged due to the materials required for the tasks requiring us to leave the relative safety of our home. Probably better to have the place empty with no income than have a non-paying tenant slowly destroying the building.

So without our income from that source we are down to 75% of possible total.

What is the impact on the remaining three going to have on us?

A second property has a tenant being supported by a disability pension (and possibly rent assistance as well) so that tenancy should be able to maintain full rent and water payments to us. We received two enquiries after the moratorium was announced from property managers seeking a reference for this tenant. Looks like that one could go empty at any time, probably without proper notification as he is not good at following the rules of renting.

A third one is rented by a single man with a job in a sheltered workshop environment so we are hoping that his job is ongoing due to the supported nature of that entity.

The fourth one is a recent lease to a single man with a good job working permanent afternoon/night shift. We're hoping that it is permanent.

The projected reality is that we could be down to 50% income from two properties with the expense of four outgoings for the properties in the near future.

It has been expressed many times in our presence that landlords are not a charitable organisation and that is true, we are in the business of leasing an asset for profit.

That concept may need a rethink on our part as we do not wish to jeopardise the tenancy in the most recent property leasing, he is a very good tenant and has the perception to us of a long term resident so we would really need to discuss rent relief with him in the event of him being made redundant or forced to accept less paid hours.

Back to the moratorium of evictions, I'm sure that if a tenant was not adhering to the requirements of the Residential Tenancies Act (1995) in areas other than rent payments, that tenant would still

be required to perform or move out as directed by a determination of SACAT.

On another aspect, this sudden rush on the stockpiling of alcohol surely couldn't be afforded by landlords could it?

Rodney Webb

CONSENT ORDERS

At the February 2020 General Meeting our president, Margaret Kohlhagen, gave a detailed description of what a Consent Order is and the purpose of a Consent Order. It is basically a detailed document of agreement terms that a tenant and landlord have agreed to in the event of a difficult circumstance arising during a private rental lease. When lodged with the SACAT that agreement becomes binding on both parties and it is enforceable in accordance with the SACAT order of the Tribunal. Rodney Webb.

John Wyk has some further information as follows.

There are forms on the SACAT website for an application for a consent order for rent arrears <http://www.sacat.sa.gov.au/upload/Consent%20Form%202%20-%20Payment%20Plan%20for%20Outstanding%20Water%20Invoices.pdf>

And for water arrears <http://www.sacat.sa.gov.au/upload/Consent%20Form%202%20-%20Payment%20Plan%20for%20Outstanding%20Water%20Invoices.pdf>

It's actually an application to SACAT, carrying the usual fee and requiring the usual documentation.

In my experience, even though landlord and tenant have agreed the facts and a remedy, SACAT will still scrutinise the evidence before agreeing to make an Order. An application for a consent order does little, therefore to streamline the process.

Is your conveyancer registered for PEXA?

This is not even a question anyone would have thought to ask just a week or so ago but now it could be the question that if not asked could delay you moving into your new home.

There has been a rampant rumour emerge over the last 12 hours that the Lands Titles Office is preparing to close its doors making 'in-person' property settlements impossible.

This should not be a problem for most conveyancers and solicitors who have migrated over to PEXA.

PEXA is an electronic lodgement system that facilitates a property transaction online rather than in person.

I have already isolated 2 deals I have in settlement where the conveyancers are not using PEXA and this may prove to disrupt the smooth transaction of property.

So, the No 1 QUESTION I would be proposing to my conveyancer is-
Are you PEXA enabled?

If not, I would shop for another conveyancer because the alternative may lead
to an unnecessary disruption.

P.S- Don't feel sorry for the conveyancer, they have had the best part of 3 years to get themselves prepared for electronic lodgement and just didn't and THAT decision may make you vulnerable to claim.

So, ask the question and cover your bases before appointing your conveyancer
in your next transaction.

Stay tuned for more helpful hints and tips to help you better navigate the new
paradigm we are all now facing.

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Guidelines for Consent Orders in SACAT

What is a consent order?

A consent order is an order made by the Tribunal which records an agreement reached by the parties to a tenancy dispute. A consent order gives effect to the agreement of the parties.

A consent order binds the parties in the same way as any other order of the Tribunal. This means that if a consent order requires a person to do something and they do not do it, then the order may be enforced in the Tribunal (or Magistrates Court) in the same way as any other Tribunal order.

The Tribunal can make consent orders without requiring the parties to attend a hearing but only where it is satisfied that the arrangement is reasonable and does not disadvantage one of the parties. The Tribunal may conduct a brief phone hearing with the parties to confirm the terms of a consent order.

These guidelines explain the process of obtaining a consent order.

Who can apply for a consent order?

Any party to a proceeding can apply for a consent order

When can a consent order be used?

You can request a consent order in any of the following situations:-

- Payment plan for rent arrears¹;
- Payment plan for outstanding water invoices;
- Payment of a security bond to settle a dispute in the Tribunal;
- A request to vary the terms of a previous Tribunal order.

How do I apply for a consent order?

If an application has already been lodged with the Tribunal.

At any time up until the Tribunal has made a decision, you can come to an agreement with the other party and ask for a consent order. If you reach an agreement with the other party at any time before the hearing you need to contact the Tribunal in writing (which can be by email to sacat@sacat.sa.gov.au or fax at 8226 8985) and request that the Tribunal make a consent order and that the hearing be cancelled. A written request may also be hand-delivered to Level 4, 100 Pirie St, Adelaide or posted to GPO Box 2361, Adelaide SA 5001.

¹ But please note that the Tribunal will not include any self - executing payments in a consent order, ie payments where the tenant must move out the next day if a payment is missed, and the Tribunal can send a bailiff to evict the tenant if satisfied that a payment has been missed.

Your written contact with the Tribunal may either be:-

- Something written in your own words or
 - Something written in the format suggested by the Tribunal
- but in either case the request must be signed by both parties (or there should be some form of written communication – eg email – from each party which records their consent).

If an application has not already been lodged with the Tribunal

You will need to lodge:-

- an application² (please visit www.sacat.sa.gov.au);
- the documents you would usually lodge in support of the application³; and
- the terms of the consent order (the agreement) which should be signed by both parties.

How does the Tribunal deal with an application for a consent order?

When the Tribunal receives a request for a consent order, that request and the documents supporting it will be reviewed by a Tribunal member or the Deputy Registrar in the same way as if the Tribunal Member were making a decision as part of a hearing.

If the Tribunal Member/Deputy Registrar decides that the request and supporting documents are all satisfactory, then a consent order will be made.

If the Tribunal Member/Deputy Registrar has a query arising from the documents then the parties will be contacted by the Tribunal Registry either to list the matter for a hearing, or requiring further documentation/explanation.

If the request is for a consent order to vary or set aside a previous Tribunal order, your request may be refused if the change would alter the basis of the previous Tribunal order. If that happens, the application will be listed for a hearing.

² Please note that the Tribunal cannot deal with your application unless you have paid the appropriate fee.

³ For a payment plan for rent arrears or outstanding water invoices, this will include the tenancy agreement, Form 2 and rent record or water invoices.

For the payment of a bond, this will include the tenancy agreement, statement of claim and supporting documents such as inspection sheets and invoices.

For a request to vary or set aside a previous order, this will include a copy of the previous order, rent record or other supporting documents.

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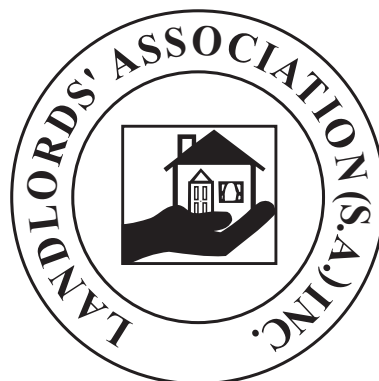
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**CLOSING DATE FOR
AUGUST 2020 NEWSLETTER****Saturday 27th June 2020**

**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*

PLEASE NOTE: It would be a great help if material
for the Newsletter could be sent by email wherever
possible to save typing.

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GUEST SPEAKER/S DISCLAIMER

The opinions expressed by speakers at our meetings do not necessarily reflect the views or policies of the Landlords' Association (S.A.) Inc.

PRICE DISCLAIMER

The Landlords' Association (S.A.) Inc. cannot accept responsibility for any change in value of any advertised prices or discounts.

FUTURE MEETING DATES

Tuesday 04/08/2020, AGM
Tuesday 03/11/2020, General Meeting

At the Fullarton Park Community Centre
411 Fullarton Road Fullarton SA 5063

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

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