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| Circular | Residential Tenancies Act |
| Date | 10 February 2010 |

PROPOSED CHANGES TO RESIDENTIAL TENANCIES ACT- Draft Residential Tenancies Bill 2009

As you may have learnt from the media, the NSW Government recently released for community consultation a draft Bill to reform tenancy laws. Various industry bodies have made submissions in relation to the Bill, which proposes some significant and concerning changes to tenancy laws. Submissions on the draft Bill closed on 18 December 2009.

The Bill is **not** law at this stage and changes may be made to it as a result of this consultation before it is introduced to Parliament in early 2010. The final Bill may differ from the draft Bill as a result of comments made during the consultation process.

If the Bill is passed by Parliament it will **not** come into effect immediately. The Regulations will need to be written and this will involve further public consultation.

Key changes include:

Terminations:

Periodic tenancy (*section 85*) – proposed change from the existing 60 day “no grounds” notice to 90 days.

Fixed term tenancy section 84 (2) – landlords to give tenant 30 day’s notice to end tenancy, currently 14 days.

Special provisions for termination by the tenant where they have accepted accommodation in social housing or an aged care facility, sections 102 (1)(a) and (b).

Termination and repossession (*section 89*) – the amendment enables a tenant in arrears to frustrate a landlord’s attempt to obtain possession of their property. In spite of the CTTT having issued orders and warrants for possession, the tenant can pay their arrears prior to the enforcement of the warrant and remain in occupation. There is no provision for the landlord to recover the costs of the orders. Serial or habitual late payers will use this right to create ‘mischief’ for the landlord as well as increasing the landlord’s financial costs.

Minor or cosmetic changes (*sections 66 & 68*) - the proposed amendment provides that a landlord must not unreasonably withhold consent for the tenant to make alterations or additions that are of a “minor or cosmetic nature”. This is very subjective and will depend on many factors including age, condition and style of the premises. The property owner must retain the right of decision as to whether their property can be altered. This proposal may also lead to a huge influx of matters to the Tribunal and the assessment of the merits of the opposing parties will be difficult to assess and create significant administrative difficulties and delays within the Tribunal system.

Other examples of changes include:

- Introduction of a ‘break fee’ (not exceeding an amount equal to 6 weeks’ rent) enables the tenant to break a lease during the fixed term by giving 14 days notice.
- Tenants can apply to the CTTT for consent to sub-letting the premises where the landlord has denied consent.
- The abolition of the tenant contribution to the lease preparation fee, which is currently capped at \$15.00.
- Water usage charges payable by tenant only if water efficiency measures prescribed by the regulations are installed in the premises.
- Urgent repairs – the prescribed list of urgent repairs to include air-conditioning (cooling).

If you are concerned about these proposed changes contact your local MP NOW.

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