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**Submission to the Ministerial Council on Consumer
Affairs and the Standing Committee of Attorneys-
General, Residential Tenancy Databases Issues Paper
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The Tenants Union of Victoria

The Tenants Union of Victoria (TUV) is a specialist statewide advocacy organisation and community legal centre, established in 1975, that provides free information, advice and advocacy to residential tenants, rooming house and caravan park residents across Victoria. In the year 2002/2003 the TUV assisted almost 30,000 private and public tenants and residents in Victoria.

The vision of the TUV is for genuine housing choice without social or economic disadvantage. Our mission is to promote and protect the rights and interests of all residential tenants in Victoria.

The TUV also promotes community awareness of tenancy laws and issues, lobbies for tenancy law reform and provides accredited training on a statewide basis for tenant and housing workers. The TUV produces a number of publications throughout the year including multilingual information in 11 community languages, a journal on tenancy issues entitled 'Tenancy Quarterly' and a broadsheet publication for tenants entitled 'Tenant News'. In previous years TUV has been a member of a number of State Ministerial Advisory Committees related to housing and tenancy issues and currently has a seat on the Victorian Ministerial Housing Council.

Summary of Recommendations:

1. That RTDs can only make adverse listings after an order has been made from the appropriate tribunal and the tenant has not complied with the order within 2 months or a time specified by the tribunal.
2. That listings can only contain information in relation to the tribunal order.
3. That there is a regulatory requirement that tenants are notified by the listing agent prior to a listing being made and provided with a transcript of the listing. Failure to comply with this should attract appropriate penalties.
4. That access to personal information held by an RTD is accessible to tenants without charge and within 5 business days and that an appropriate mechanism is established to ensure that the RTDs verify the identity of the tenant before releasing information.
5. That the consent process for a real estate agent to check an RTD requires the agent to inform the tenant of the contents of any listing.
6. That all listings should be removed upon compliance with a tribunal order or the resolution of the dispute.
7. That a time limit be established on listings where the tenant has not complied with a tribunal order.
8. That a listing be removed where the tenant can show that the breach was beyond their control and presents no current risk to prospective agents/landlords
9. That the category of 'refer to agent' listings are abolished in line with recommendations 1 and 2.
10. That RTDs are regulated at either a national or state level:

Option 1

A national industry funded ombudsman is established for the RTD industry that complies with the Federal Governments benchmarks for Industry-Based Customer Dispute Resolution Schemes

Option 2

That the respective state and territory residential tenancies legislation is reformed to regulate RTDs.

Introduction

Role of the Private Rental Market

The role of the private rental market within the broader housing market has taken on greater significance throughout the 1990s (Seelig 2001). According to the latest ABS data, one in four households are renter households. In Victoria alone there are 328,176 households living in the private rental market. Once seen as transitional tenure, renting has become the long term option for many households who are unable or choose not to access home ownership.

The private rental market is highly segmented.

In terms of the choice-constraint dichotomy, the reality is that the Australian private rental sector serves a dual function, providing choice for the more affluent and constraint for the poor (Burke 1999:11)

Ironically, there is evidence that some households who are in a position to exercise market choices, trade down in private rental, paying cheaper rents for less amenity and effectively squeezing out low-income households who are reliant on the private rental market for long-term housing (Yates & Wulff, 2000). Significantly, low cost (ie low rent) housing in the private rental market declined by 28% between 1986 and 1996, at the same time as there was an increase in low-income households renting privately (Wulff & Yates w Burke, 2001). The result in Victoria was a shortfall of 36,000 low cost properties across both metropolitan and rural areas in 1996 (Yates, 2002). Little low cost private rental housing is purpose built and a mismatch between the private rental stock profile and the changing demographics increases competition for limited stock. In Melbourne, the recent boom in inner city apartment construction has resulted in a glut of rental properties at the higher end of the rental market with little or no impact at the low cost end.

Affordability is a more significant issue for households in the private rental market than for any other tenure. The Affordable Housing National Research Consortium (AHNRC) found that private tenants are the group most likely to be dealing with housing affordability issues (AHNRC, 2001). Their research shows that 54% of private tenant households are experiencing housing stress (paying more than 30% of their income in housing costs), which is twice as high as households who are purchasing, and six times higher than households living in public housing (AHNRC, 2001). In the state capital cities of Australia, nearly 3 out of every 4 private renter households in the lowest 40% of total incomes are experiencing housing stress (Berry and Hall, 2001).

Many low-income households are forced to trade off amenity for cheaper rent or share in overcrowded situations (Burke, 1998). Data on the standard of private rental accommodation in Australia is scarce (Paris 1993), partly due to the nature of the private rental market and the exchange of properties between private rental and home ownership markets (Seelig, 2001). However,

many private rental dwellings lack basic features, such as heating/cooling, that would be consistent with community standards of appropriateness.

With few other options, low income and marginalised households are spending long periods of time in private rental (Wulff, 1997, Beer, 1999), often in housing stress (Yates and Wulff, 2000). Those who find themselves unable to access the private rental market, slip into even more marginalised forms of housing such as rooming houses and caravan parks. The private rental market has failed to adapt to changing demands and improvements need to be made across a range of areas to ensure that the needs of low income and marginalised households are met.

Discrimination is also a barrier to many households attempting to access private rental (San Pedro, 2000, Adkins et al, 2001). While recourse is available through Equal Opportunity legislation, the complainant must fit within a specific category and the process is often slow and does not ultimately help to secure accommodation.

Role of RTDs

Against this background RTDs have established themselves purporting to offer risk management and debt reduction assistance to real estate agents and landlords. In Victoria they operate with no independent monitoring or regulation and this has resulted in a range of practices that have significant consequences for tenants, particularly low income households who rely on the private rental market for long term accommodation.

The capacity of an unregulated tenant database sector to adversely impact on the renter population of Victoria is significant. RTDs are effectively locking tenants out of the private rental market in an environment where access to other tenures is restricted. This could potentially lead to an increase in the use of crisis and homeless services and a growing market for marginalised and inappropriate accommodation such as privately operated caravan parks and rooming houses.

CASE STUDY:

DP contacted the Tenants Union of Victoria after being continually knocked back for properties despite good references from Real Estate agents and employers. He and his two young children had been effectively barred from the rental market and were at serious risk of homelessness. With the assistance of the Tenants Union, DP found out that he had been listed 15 years prior for a debt of under \$250 that had allegedly been incurred at the property that his brother still rented. When pushed neither the real estate agent that had listed him nor the RTD could verify the debt. He was eventually removed from the database.

Left unregulated, RTDs have the potential to undermine existing regulation. In some regional centres in Victoria where there are low vacancy rates tenants are afraid to request repairs or exercise their rights for fear that they will be

listed. This is particularly an issue when the listing database has no process for removing listings. Each state and territory has its own Residential Tenancies Act and accompanying court/tribunal that is the appropriate vehicle for resolving disputes between tenants and landlords. RTDs should not be used by agents to circumvent the tribunal through threats, punitive listings or listings prior to tribunal decisions.

Listings

The lack of regulation of RTDs has resulted in a wide variance of practice in relation to listing tenants. Some real estate agents will list a tenant when a breach of duty notice has been issued, while others will only list tenants at the conclusion of a tribunal hearing. Some disreputable agents have been known to list tenants on the basis of a personal dispute. Regulation of tenant databases should ensure that the listing of a tenant is not left solely to the discretion of the listing agent but based on a clear set of criteria.

The Tenants Union of Victoria believes that tenants should only be adversely listed where a tribunal order has been made and the tenant has not complied with the order within a two month period or a time specified by the tribunal. This will ensure consistency of practice by agents and allows the tenant the opportunity to respond. It also ensures that the correct legislative process for resolving disputes has been taken and that the relevant Residential Tenancies Acts are not undermined.

Currently anyone can be listed on a tenancy database even if they are not party to a tenancy agreement. Real estate agents can list people with out having to verify that the person is or has been a tenant in the property in question, leaving it open to abuse by unscrupulous agents. A process where tenants can only be listed following a tribunal order ensures the validity of a tenancy even when a tenant has not signed a tenancy agreement.

The Tenants Union of Victoria believes that the tenant should be notified prior to the listing being made and given an opportunity to respond or dispute the listing. Penalties should apply if reasonable steps are not taken to ensure that the tenant is notified

Recommendation:

1. That RTDs can only make adverse listings after an order has been made from the appropriate tribunal and the tenant has not complied with the order within 2 months or a time specified by the tribunal.
2. That listings can only contain information in relation to the tribunal order.
3. That there is a regulatory requirement that tenants are notified by the listing agent prior to a listing being made and provided with a transcript of the listing. Failure to comply with this should attract appropriate penalties.

Access to listings

There is no regulatory requirement that the real estate agent or RTD operator must notify the tenant that they have been listed, although some RTDS do have contractual requirements. Commonly a tenant will vacate a rented premises and move into a new property before the bond and other outstanding issues in relation to the tenancy are resolved. Sometimes the tenant has already secured alternative accommodation by the time the real estate agent decides to list them on a tenancy database. The tenant may not find out about the listing until they move again, months or sometimes years later.

In the current environment different RTDs have different methods and charges for accessing the personal information held. As being listed can have serious implications for tenants, including homelessness it is imperative that tenants are able to access their personal details without charge and within a reasonable period of time. Low income tenants are particularly vulnerable as low cost properties are limited and competition is high.

There should also be an obligation on any real estate agent that searches an RTD for a prospective tenant to inform that tenant of the content of any listing found.

Recommendations:

4. That access to personal information held by an RTD is accessible to tenants without charge and within 5 business days and that an appropriate mechanism is established to ensure that the RTDs verify the identity of the tenant before releasing information.
5. That the consent process for a real estate agent to check an RTD requires the agent to inform the tenant of the contents of any listing.

Removals from databases

Currently the process for removing a database listing varies from operator to operator. Some will remove a listing only when the listing agent requests it in writing. Others will not remove a listing but merely update it to reflect any changes ie: 'debt paid'.

No database operator that we know of has a time limit for listings. In some cases this means that a tenant may be effectively listed for life. As a listing can have such a detrimental effect on tenants, in some case effectively restricting access to the private rental market, there needs to be an established process for removing a listing. Up dating a listing is not enough as discrimination can occur simply because a person has been listed regardless of whether the listing states that the issue has been resolved. All unresolved listings should be removed after a specific period of time.

As recommended above the Tenants Union of Victoria believes that listings should only be made after a Tribunal order is in place. Following from this it makes sense that once the order has been complied with the tenant should be removed from the listing. This benefits agents by creating an incentive for the tenant to comply with the order.

In circumstances where a tenant has been listed for actions beyond their control that present a minimal risk to the landlord/agent, the tenant should be able to challenge the listing and seek its removal.

Recommendations:

6. That all listings should be removed upon compliance with a tribunal order or the resolution of the dispute.
7. That a time limit be established on listings where the tenant has not complied with a tribunal order.
8. That a listing be removed where the tenant can show that the breach was beyond their control and presents no current risk to prospective agents/landlords

'Refer to Agent' listings

Currently there is no requirement that real estate agents prove the validity of their claims when they list a tenant. Some RTDs have different criteria for agents to list tenants ie: 'damage to property' or 'dishonoured cheques' none of which require validation by an appropriate tribunal. One of the most concerning criteria for listing is that of 'refer to agent'. This leaves tenants wide open to vexatious listings by agents as there is no need to state the reason for the listing and no way of monitoring what the listing agent may say to other agents. Anecdotal evidence suggests that some real estate agents use this category to list tenants who try to enforce their rights.

Recommendation:

9. That the category of 'refer to agent' listings are abolished in line with recommendations 1 and 2.

Regulation of Industry

The inconsistencies in the operation of RTDs across the country highlight the need for regulation. Queensland is currently the only state to amend its residential tenancy legislation to include the operation of RTDs, all other states rely on self regulation of the industry. There is a very real risk of RTDs having a detrimental effect on the housing outcomes of tenants if the current system of self-regulation continues.

The Tenants Union of Victoria believes that a national regulatory framework is needed that has jurisdiction over RTDs. The Tenants Union of Victoria recommends the establishment of an industry funded ombudsman for RTDs. Such an independent dispute resolution mechanism should comply with the Federal Governments benchmarks for Industry-Based Customer Dispute Resolution Schemes. In particular, listed tenants should have free access to the scheme and its decisions should be binding.

Failing the establishment of an industry funded ombudsman the Tenants Union of Victoria advocates reforms to the respective state/territory residential tenancies legislation to regulate RTDs.

Recommendation:

10. That RTDs are regulated at either a national or state level:

Option 1

A national industry funded ombudsman is established for the RTD industry that complies with the Federal Governments benchmarks for Industry-Based Customer Dispute Resolution Schemes

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