

Submission to the

**Ministerial Council on
Consumer Affairs Standing
Committee of Attorneys-
General**

**Residential Tenancy
Databases**

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1 INTRODUCTION

1.1 ABOUT THE TENANTS' UNION OF TASMANIA INC

The Tenants' Union of Tasmania (TU) works for the interest and rights of residential tenants in Tasmania and seeks to:

- Improve conditions in rental housing in Tasmania so that they meet accepted minimum standards.
- Raise awareness within the community about tenancy issues
- Promote legislative change where this is necessary to improve outcomes for tenants.

The TU:

- provides a free service
- has specialist knowledge of tenancy issues
- is the only specialist organization of this type in Tasmania
- seeks to offer a service to all residential tenants

1.2 TENANT DATABASES IN TASMANIA

Residential Tenant Databases (RTDs) are something of an enigma within Tasmania. They are often referred to in communications from real estate agents to tenants, but no direct information is given to tenants informing them of a listing.

Reference to RTDs in Tasmania by agents is used commonly as an intimidatory tool. This has been generated by the wide publicity about RTDs on the mainland. They are referred to as Bad Tenant Databases.

However, we believe that the Real Estate Institute of Tasmania (REIT) was running its own database in both 1998 and 1999. In 1998 the TU wrote to the REIT about the use of a database. The REIT response to us confirmed this. This data system appears to be in-house for member agents. Of particular concern to us were the references by the REIT in both 1998 and 1999 in written communications to us that their database records 'delinquent tenants'. We are unaware at this point whether or not this database is still in operation. Barclay MIS is the RTD most often referred to by real estate agents in this state.

Consumer Affairs and Fair Trading (CAFT) in Tasmania circulated a paper on RTDs in November 2001. (Copy attached – attachment 1)

There is also in operation a web-based database for landlords (www.thelandlord.com.au). This business charges tenants \$15.00 to make an enquiry about listing. (Information attached – attachment 2)

2 The RTD industry and how it operates

2.1 The Role of RTDs

There is no substantive or empirical knowledge about the benefits of RTDs.

RTDs are referred to as a legitimate tool for use by the real estate industry. This statement is not necessarily based on empirical knowledge but we would conjecture is based on marketing and speculation that this type of system *could* provide benefits to managers and owners of property. A question that needs to be asked here is do the benefits (not yet quantified) to managers and owners out-way the removal of a tenants' basic right to housing under the UN Declaration of Human Rights Article 25. We would contend they do not.

The RTD industry to our knowledge has failed to provide empirical knowledge eg: examples and case studies that would substantiate a benefit over and above other tools used for assessment purposes that justify the refusal of housing to those in need.

2.2 The operation of RTDs

The information contained in the paper under section 2.3.1 fails to acknowledge that tenants do not have the right to refuse any of the information requested on an application form for tenancy. Nor can they reasonably refuse to have checks on a RTD undertaken. Most tenants know that refusal to provide the information required would mean that an application would not be processed.

Tenants have no right to privacy of information, if it is requested on an application form it must be completed regardless of its relevance.

CASE STUDY: A Tasmanian real estate agent's application form required tenant A to provide them with their social security number. Other information requested related to the tenants studies, course, faculty and student number.

Not one of the above pieces of information would provide a real estate agent or an owner with information necessary to ascertain if the applicant would be a good tenant. Yet the information is collected and can now be stored on a database.

In Tasmania over the past 6 years there have been less than a handful of tenants who inform our organization, the Tenants' Union of Tasmania that they have been told that they have been refused a tenancy due to being listed.

Both the TU and one of our bond assistance agencies believe that tenants are refused properties due to listings, but are not informed about the listing or where they are listed.

Tenants on a regular basis receive letters from real estate agents threatening to place the tenant on a database if their rent is not received. These letters are notoriously sent (computerized letters) the day after rent was due, regardless of the circumstances. For example, if the tenant has informed the agency that rent would be late due to personal circumstances, or that a public holiday interferes with the regular income or payment.

CASE STUDY: Tenant B didn't pay rent on the due date. Two days later they received a letter from the agent stating that if rent were not paid immediately the tenant would be placed on a tenant database.

This type of correspondence fails to enact the legislative provision in the RTA. If a tenant fails to pay rent an owner or agent can issue a notice to vacate. If the rent is paid within the notice period the notice is void. Correspondence of this nature does nothing to enhance a tenant/agent-owner relationship and does everything to intimidate a tenant.

In section 2.3.2 of the paper the process of RTDs is referred to. Listings are made either as a negative listing, a positive listing or neutral listing. This is by default providing a tenant rating system, not highlighting to managers and owners issues that may lead them to consider not renting to this particular person. But, instead provides someone's opinion about the tenant's character.

Due to the nature of tenancies, it is more than likely that a tenant would be listed at the end of the tenancy. Therefore, it is often difficult for an agent to notify the tenant of a listing. The question to be asked is does this, lack of knowledge on the part of the tenant provide the agent with the right to proceed with a listing that the tenant has been unable to provide a response to? Even a so called positive listing should be notified to the tenant. Consideration must be given to the impact on the tenant and any prospective property owner.

To a tenant it could mean homelessness in the future.

To a property owner it means *one*, and it should be stressed one avenue unavailable as a reference check to assist with the assessment of suitability of a prospective tenant.

As stated on page 7 of the Issues Paper, there is no requirement for a real estate agent to provide the tenant with the reason for not being granted the accommodation. In Tasmania this means that many tenants are unaware of any listing.

Section 2.3.3 refers to a listing as belonging to the person listed eg: 'Some operators charge tenants to access their listing,' The listing is made about the tenant, yes, but to indicate that the listing in any way belongs to the tenant is erroneous, especially as some

RTDs charge tenants for access to a listing that refers to them and listings can only be removed by the listing agent.

In section 2.3.4 reference is made to RTD operators undertaking mediation if a dispute about a listing arises. We also note that no reference is made as to the skill and knowledge levels required by staff in order to ‘mediate’ a dispute between a tenant and property manager if one arises due to a listing.

There are a multitude of reasons that could lead to a listing in the first instance, eg: many tenants inform us of the bullying treatment they receive from property managers when they endeavour to exercise their rights, for example request repairs, or dispute the increase in rent through the appropriate channels. It would be reasonable for RTD operators to have appropriately qualified mediators in order to mediate a dispute – for instance some formal qualification combined with experience in the area of residential tenancies.

During an application for tenancy a number of tools can be used to establish whether or not the applicant would be a suitable tenant. The requirement for references of past property managers or in the absence of rental history personal references could be used (in the case of first time renters, or renters who have not been in the market for a number of years). Effective use of such tools should leave no real need for the use of RTD’s.

A number of application forms require tenants to provide 100 points similar to banks – how this is used as a risk management tool we are uncertain as this type of system is about identification not suitability. We also firmly believe that this is a mistaken requirement by agents as the line of credit we argue is from the tenant to the property owner via the bond, not the other way around.

It would be interesting to have quantifiable data on the success rates (or otherwise) of those placed in tenancies using RTDs as a basis for a successful tenant as opposed to those who use other means of establishing a successful tenant.

Given the volume of tenants listed on RTD’s (NTD is claiming to hold 700,000 records) we are concerned that tenants are being listed merely on the basis that their landlord or agent considered them a “bad” tenant/s. This type of practice is of concern to the TU, because in some minds the simple fact of being listed on what is commonly known as a ‘Bad Tenant Database’ implicates those listed as bad tenants, or at best bad tenants at one point in time.

Recommendations:

- That RTDs are closed down with all information relating to tenants destroyed.
- Failing this the TU see the following as essential to RTD operations:

- Only breaches to an RTA recognized by a court or tribunal are listed. A copy of the court or tribunal decision should be forwarded to the RTD as proof.
- All listings that have been rectified should be removed on the date of notification of the rectification. It is unreasonable to have information available that pertains to a resolved matter.
 - Only amounts greater than the bond held can be listed.

Any reference to monetary amounts should be only for monetary amounts over and above the bond monies placed on the property. Otherwise this makes a mockery of the bond system. Tenants have put up a security and that security should be recognized for what it is, security in the case of any debt arising at the end of the tenancy. Therefore, only monies over and above the security should be seen as ‘possible for listing’.

When these monies are paid the listing should be automatically deleted.

- That listings are restricted to breaches under an RTA and that all positive or neutral listings are immediately removed.

3 The Current RTD Regulatory Environment

RTDs operate in an unregulated environment. Queensland are the only state to date that have endeavoured in some way to address the impact of RTDs. The TU made initial enquiries under the states Fair Trading Act, unfortunately the response was to wait and see what would happen under the then proposed national privacy laws. Unfortunately, issues relating to what information could be listed and when a listing could be made were not addressed.

Tasmania’s residential tenancy laws as stated in the issues paper only address disputes arising from a residential tenancy agreement.

In our experience of the real estate industry it fails to address complaints made against its members in any meaningful manner. These complaints range from harassment to bullying to breaches of the Fair Trading Act. Tenants rarely undertake action that may address these complaints as the ramifications are untenable, in most circumstances the problem escalates and the tenant ends up having to move in order to achieve quiet enjoyment and privacy.

CASE STUDY: Tenant M made a written complaint about the behaviour of her agent to REIT. The response stated that the REIT was not in a position to address complaints from tenants; its role was to address complaints from clients of members, those being owners of properties in this instance.

We also experience a reluctance to investigate issues raised under the RTA to its regulatory body Consumer Affairs and Fair Trading (CAFT).

CASE STUDY: Tenant S had an unexpected visit by her agent. The tenant requested the agent to leave, as it was not convenient for the tenant to spend time with the agent. The tenant eventually shut the door; at this point the agent began to yell abuse at the tenant through the closed door. A complaint was made to CAFT who informed the tenant to record any subsequent incident and if it kept happening to then make a complaint. Tenant S rang the TU for advice and requested that we forward on her complaint this was in November 2003. To date tenant S has not been contacted by CAFT to make any inquiries re the incident. Tenant S given this reception by the governing authority for the RTA, did not wish to pursue a complaint to the REIT due to concerns about the possibility of a complaint affecting future rentals.

The TU believes that industry self-regulation is not appropriate.

Recommendation

- That a national complaints mechanism is adopted to provide tenants the ability to register complaints about their real estate agent or property owner/manager.

4 Issues Relating to listing tenants on RTDs

As previously stated the major issue in Tasmania is the failure of agents to inform tenants of any listing.

This situation is compounded by the fact that an agent is not required to disclose a reason for not granting a tenant a property. If a tenant is not informed as to the reason they cannot undertake to do anything about the situation.

CASE STUDY: Tenant T had been refused two properties listed by the same real estate agent. No reasons were given. The following week one of the properties was again in the rental section of the newspaper. When the tenant enquired they were told it was an error that the advertisement was in the paper. The tenant had a friend call the agent and ask about the property. They were given details and invited to undertake an inspection. Tenant T rang the agents again asking for an explanation, the agent hung-up. When the tenant phoned back they were told not to ring again and if they persisted they'd be reported to the police for harassing the agency.

Given the lack of information, misuse and abuse of RTD's and the impact they have on a person's ability to rent a home they should be abolished.

Recommendation

- That the use of any database that prevents tenants access to housing be made illegal and that severe penalties are imposed on any person, business or organization that uses one.

5 List of Recommendations:

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- That listings are restricted to breaches under an RTA and that all positive or neutral listings are immediately removed.
- That a national complaints mechanism is adopted to provide tenants the ability to register complaints about their real estate agent or property owner/manager.
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