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Residential Tenancies Amendment (Review) Bill 2018 summary

For over three years, REINSW, the REINSW Property Management Chapter Committee and dedicated RTA Sub-Committee worked tirelessly to achieve fair and equitable outcomes for all stakeholders in the lead up to the review of the *Residential Tenancies Act 2010* (the Act), resulting in the Residential Tenancies Amendment (Review) Bill 2018 (the Bill).

In each area addressed in the Bill, REINSW fought hard to secure the best possible outcomes. There are some wins and some losses. But one thing is clear – the final amendments could have impacted property managers and the property services industry more adversely had we not persevered.

Summary of the changes

Landlord information statement

The new section 31A prevents a landlord entering into a residential tenancy agreement unless the landlord or their agent signs an acknowledgement on the agreement that the landlord has read and understood the information statement.

For many years, REINSW has lobbied for the introduction of a landlord information statement. Just as the New Tenant Checklist is a useful resource for tenants, REINSW believes that a similar checklist is essential for landlords. Landlords need to be better informed about their responsibilities under the Act and other legislation, including the condition of the premises and their obligations regarding statutory matters.

What will be included in the proposed landlord's information statement has not yet been disclosed, however REINSW believes it should set out the matters for which the landlord is responsible.

Access to premises without consent

The new section 55(2)(d1) allows the landlord, the landlord's property manager or any other person authorised by the landlord to take photographs or make a visual recording of the interior of a property where the tenant has been given reasonable notice and a reasonable opportunity to move any of their possessions out of the frame of the photograph or scope of the recording. Such photographs and recordings may only be taken to advertise the property for sale or lease and may only be taken once in the 28 days before the marketing campaign commences or agreement terminates.

Property managers often experience resistance from tenants regarding photography and video recordings because they don't want their personal possessions appearing in online advertising or as part of any marketing material for the sale or lease of the property.

Tenants will now have the peace of mind of knowing they have a reasonable opportunity to move any of their possessions out of frame prior to the photography or recording occurring.

Where a property manager has provided reasonable notice and a reasonable opportunity to move possessions and the tenant has chosen not to move such possessions, the photography or recording can still go ahead.

Separately metered premises

A new definition for "separately metered" will be added to section 3.

The new definition addresses some of the issues property managers face when charging tenants for water and other utility charges.

The amendment means that electricity, gas, oil or water will now only be able to be charged where there is a separate meter installed measuring supply to the tenant's premises and a separate bill is issued by the supplier. Property managers will no longer be required to physically attend the premises to read the meter or calculate the correct amount payable from a single invoice issued for multiple premises.

Break fee

The break fee is now mandatory for all fixed term agreements of less than three years, and the new section 107(4) sets out a cascading scale for the calculation of the fee.

Where a property is abandoned, the break fee will be:

- If less than 25 per cent of the fixed term has expired – four weeks' rent
- If 25 per cent or more but less than 50 per cent of the fixed term has expired – three weeks' rent
- If 50 per cent or more but less than 75 per cent of the fixed term has expired – two weeks' rent
- If more than 75 per cent of the fixed term has expired – one weeks' rent

REINSW believes the proposed calculation is grossly unfair. Landlords will see little security in offering tenants longer term leases, because the penalty for breaking the lease is minimal. For example, under the proposed cascading scale, a tenant who is in the last three months of a 12-month fixed term tenancy can effectively give zero days' notice of their intention to vacate the property and only be liable for the equivalent of one week's rent as compensation to the landlord.

Rent increases

The new section 41(1B) limits the number of rent increases that can be made under a periodic agreement to only one in any 12-month period.

REINSW believes it's fundamentally wrong to impose restrictions that inhibit a landlord's right to use market value and market conditions to dictate the rent they can receive for their property.

One of the inevitable consequences will be larger rental increases. Rather than smaller, incremental increases every six or nine months, tenants may be hit with a single major increase once in every 12-month period. Further, to compensate for any incidental or unexpected occurrences, some landlords may be inclined to increase rents in an unnecessary and exorbitant manner. It also inhibits the landlord's ability to improve the property, both of their own volition or at the request of the tenant.

Minor alterations by tenants

The new section 66(2A)(a) states that the Regulation may provide for the kinds of minor alterations that would be unreasonable for a landlord to refuse consent.

REINSW believes landlords should have the absolute discretion to decide what alterations are made to their property. Individual tenants will invariably have their own needs or desires when it comes to alterations to a property. While it's important they feel the property is their "home", it is still the landlord's asset.

REINSW is opposed to a list of permitted alterations included in the Regulation, because any alteration should always require the landlord's written consent – and that consent should be able to be withheld at their discretion.

The new section 66(2A)(b) sets out that the Regulation may prescribe circumstances where the landlord's consent can be conditional on the alteration being carried out by a qualified person.

REINSW firmly believes that under no circumstances should alterations be carried out other than by a qualified tradesperson. Further, rather than requiring the landlord to specify consent in each instance, it should be the default position; for example, all alterations must only be carried out by a qualified tradesperson.