



Shelter Tas

Workforce Development Online Q&A Evaluation Report

RTA Evictions, Exemptions and Complications

20 September 2020

Evaluation

Training session:	RTA: Evictions, Exemptions and Complications Revisited
Facilitator:	Alex Bomford Solicitor, Policy Officer & Community Legal Education Officer, Tenants' Union of Tasmania
Date:	20 September 2020
Region:	State wide
Overview:	The evaluation and feedback from the first online session held with Alex from the Tenant's Union, was overwhelmingly in favour of a follow up session. This second session from the Tenant's Union drilled down into the rights and responsibilities of tenants around common issues of mould, subleasing, as well as looking at trends, patterns and risk points. It also provided a discussion around COVID measures such as the non- eviction and rent freeze period which was due to end and how the SHS and CHP teams can work most effectively with the Tenant's Union around the predicted influx.
Resources:	Q&A, links and templates
Participants:	45
Evaluations completed:	19
Overall rating:	100% rated this training good/excellent

Summary

- The training was delivered across the state (online).
- 94.4% of participants who completed the survey rated the training as good or excellent
- 100% of participants who completed the survey said the session was useful.

Training overview

The Tenants' Union provided a brief overview on the role and function of the tenant's union and an overview of the Residential Tenancy Act. This second session from the Tenant's Union drilled down into the rights and responsibilities of tenants around common issues of mould, subleasing, as well as looking at trends, patterns and risk points. It also provided a discussion around COVID measures such as the non-eviction and rent freeze period which was due to end and how the SHS and CHP teams can work most effectively with the Tenant's Union around the predicted influx. Questions were sought from the sector in the leadup to the session and participants were encouraged to raise issues and questions throughout the session.

Background

Workforce Development Program 2018-23

Shelter Tas has a 5-year funding agreement with the Department of Communities Tasmania (Housing Tasmania) for the Workforce Development Program (WDP) 2018-2023. The purpose of the WDP is to *facilitate specialist professional development and training activities that: continue to build workforce capacity of the housing and homelessness sector; respond to new and emerging sector issues and support Tasmanians who are experiencing, or who are at risk of homelessness.*

Shelter Tas is developing, promoting and evaluating a schedule of specialist quality training in line with the following priorities:

- Priority 1 - Increasing the skills and competencies of the SHS workforce
- Priority 2 - Increasing the accessibility of training and professional development to the whole of the sector.

Consultation

The COVID-19 pandemic has changed the way our services operate and created a set of new challenges beyond those identified through our Jan 2020 WDP Survey and Feb 2020 strategic planning meeting. Shelter Tas supported the SHS and CHPs by holding weekly COVID meetings that brought together services from around the state and the Department of Communities to address the impact of the pandemic and share solutions. This forum informed the series of online workshops to be delivered through the Workforce Development Program, the Workforce Development Reference Group provided valuable input and authorised the online workshop plan. The evaluation and feedback from the first online session held with Alex Bomford from the Tenant's Union, was overwhelmingly in favour of a follow up session.

Comments

"It was a shame we run out of time, I would love to see regular sessions especially with all the changes coming up. Alex is always great."

“Keep up the excellent presentations, very helpful thank you..”

“no suggestions but it is excellent to have the opportunity to have access to these sessions.”

“I am new to CatholicCare’s Home and Housed Programme. I sat with other CatholicCare’s Staff today during today session and found it very resourceful for my Program.”

“Continue sessions especially when changes are happening. Thankyou.”

Q&A Summary and Resource Link: Please see complete summary of Q&A and links below

Presenter: Alex Bomford

Solicitor, Policy Officer & Community Legal Education Officer, Tenants’ Union of Tasmania

About the *Residential Tenancy Act 1997* (RTA)

- The RTA covers most matters between landlords and tenants.
It is intended to be useful to non-lawyers.
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-082>
- Until the RTA was introduced in 1997, matters between landlords and tenants were covered by Common Law and the *Landlord and Tenant Act 1935*
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1935-042>
- **The RTA does not apply to**
 - Sub tenants
 - Lodgers
 - Students living in UTAS accommodation
 - Aged care or retirement village residents
 - Shelters, including family violence shelters, have a 3-month exemption from the RTA, or
 - **Tenants living in long term caravan parks**
- Where the RTA does not apply (for instance, the landlord has an exemption) the Common Law applies. This means that an SHS operating under an exemption from the RTA could end up in the Supreme Court to resolve a tenancy matter such as a contested eviction.
- The RTA gives landlords more power to evict than they had before under Common Law or the earlier *Landlord and Tenant Act 1935*.
- The RTA increased the rights of tenants and provides tenants with the ***right to quiet enjoyment***, which means the right to the use of the property without interference.
- The RTA is enforced by the Residential Tenancy Commissioner, for example, when there are bond disputes.

https://www.cbos.tas.gov.au/_data/assets/pdf_file/0003/411492/Guide-to-the-Residential-Tenancy-Commissioner.pdf

The role of the Tenants' Union of Tasmania

- The Tenants' Union of Tasmania (TUT) represents tenants when there is a dispute between a tenant and landlord. There is a team in Hobart, a Tenants' Union solicitor in Launceston Rebecca@tenantstas.org.au, and face to face advice is available in the North West Community Legal Centre.
- **If a person is at risk of eviction from private rental, social housing or supported accommodation, refer to the Tenants' Union as soon as possible. Often the tenancy can be saved, and involving the Tenants' Union will likely gain more time for the tenant.**
- TUT cannot advise or represent landlords, but the resources on its website can be used by anyone. The *TUT Fact Sheets* are especially useful <http://tutas.org.au/factsheets/>
- A social worker or support worker can contact the Tenants' Union on behalf of a client if they have permission to do so.
- The Tenants' Union have also developed a COVID-19 FAQ resource which [you can find here](#)
- If there is a dispute between tenants, the Tenants' Union cannot represent either party. These cases are referred on to Legal Aid.

Beware of real estate agents providing legal advice

Real estate agents are **not** a reliable source of legal advice. They are not trained to give legal advice, and may not be accurate or accountable, even if they intend to be helpful. Instead, refer to the RTA, or TUT fact sheets, or to your organisation's guidelines.

Key points from presentation and responses to questions from sector.

- **Minors** – people aged under 18 and under 16 can sign leases – so long as the young person understands the nature of the agreement. However, while the law may permit the young person to sign the lease, there may be other barriers, such as low income, or a landlord's or agent's perception.
- **Approved Occupant:** This term is used in public housing, but is not defined in the RTA
- **Shared houses:** All the tenants are jointly liable for the rent and any damage. All can be held responsible for the actions of any individual tenant.
- **Sub-tenancy:** Sub-tenants are not covered by the RTA, but may have a lease under Common Law. Commonly, sub-tenants have trouble getting their bonds back, and they would have to take court action to get it back because they cannot apply to the

Residential Tenancy Commissioner. Legal Aid could provide assistance about sub-tenancy disputes (because this would be a dispute between tenants, it is not in scope for the Tenants' Union).

- **Community Housing Providers** are regulated and required to have clear policies and practices under their regulation. For example, Housing Choices provides new tenants with booklets about the RTA along with other information.
- **Importance of being familiar with the relevant law (RTA or Common Law)** and following RTA proactively to uphold and protect tenants' rights. For example, it is important to understand the tenant's right to quiet enjoyment.
- **Repairs:** Some less scrupulous real-estate agents and landlords ignore requests for repairs because they know that tenants are very unlikely to complain to the Residential Tenancy Commissioner.
- **Urgent and general repairs during the Covid-19 restrictions**
Under the Covid-19 restrictions, only urgent repairs need to be completed. The Residential Tenancy Commissioner considers mould to be a general repair, ie not urgent, so it need not be remedied during Covid-19 restrictions. RTC has also advised TUT to refer mould issues to the environmental health officer of the Local Government Area, who can rule that a property is uninhabitable. This would result in the person no longer being able to stay in the property, which may be a perverse outcome. Find the TUT fact sheet about mould at <http://tutas.org.au/factsheets/>
- **Minimal Standards for heating**
Under the RTA, every rental property has to have a fixed heater. But the RTA does not require that the heater has to be hard wired in to benefit from a discounted tariff (for most customers with Aurora, this is Tariff 41 for heating and hot water) and does not require the heater to meet any standard of efficiency or effectiveness. A landlord can comply with the RTA if they buy a cheap inefficient heater, plug it into the mains and attach it to a wall.
- The RTA does not require rental properties to be insulated