

Should Residential Tenancy Inspection Reports be supplemented by Visual Aids?

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ABSTRACT

In NSW, landlords and tenants have rights and responsibilities with regards to the rental of real property. The *Residential Tenancies Act* which commenced on the 30th October 1989 sought to balance the rules for landlords and tenants and introduced new legislative requirements for the written tenancy agreement which was to consist of two parts. Part 1 relates to the terms of the agreement and Part 2 relates to the premises condition report at the beginning of the tenancy. The written tenancy agreement has 28 terms, which cannot be altered or deleted.

The research paper focused on those issues that related primarily to Part 2 of the written tenancy agreement between the landlord and tenant. The research examined the adequacies of the current legislation, and whether or not the legislation met the needs of today's changing landlord and tenant, and if in fact there was a need for a reform of Part 2 of the written tenancy agreement.

A survey undertaken indicated approval of the present form of the condition report, with some minor recommendations. With regards to the suggestion of visual aids enhancing the condition reports, this was not well received by the respondents. The respondents appeared to be concerned over the accuracy and accountability of the visual aids.

KEYWORDS

Landlords, tenants, Residential Tenancies Act, property managers, Consumer Trader and Tenancy Tribunal, written tenancy agreement

INTRODUCTION

The Residential Tenancies Act, which commenced on the 30th October 1989 sought to balance the rules for landlords and tenants. The new legislative requirements introduced for the written tenancy agreement, consisted of two parts. Part 1 relates to the terms of agreement and Part 2 relates to the premises condition report at the beginning of the tenancy (NSW Office of Fair Trading). Currently there are 28 terms which cannot be altered or deleted. This research paper focuses primarily on Part 2 of the written tenancy agreement between the landlord and the tenant.

BACKGROUND

Prior to the introduction of the Residential Tenancies Act, landlords and tenants were regulated by the *Landlord and Tenant Act 1899* as amended by the *Landlord and Tenant (Amendment) Act 1948*. Under the 1899 Act magistrates conducted proceedings similar to the courts of law. The amendments to the 1899 Act originated from the wartime controls imposed by the Commonwealth during the first and second world wars, where there were numerous restraints on the increase of rentals, and the manner in which tenants could be evicted.

The States of Australia agreed during this time, to co-operate with the Commonwealth regarding these issues and hence on the 1st January 1916, during the First World War, the *Fair Rents Act 1915* was introduced and was in force until 1st July 1933 when the *Reduction of Rents Act 1931* was introduced. Effectively the 1931 Act reduced rents by 22.5%. In 1948, New South Wales held a referendum to consider giving the Commonwealth permanent power over rent control. This referendum was defeated, and the *Landlord and Tenant (Amendment) Act 1948* was passed. (Butt 1996).

The 1899 Act was repealed by the *Residential Tenancies Tribunal Act 1986* and on the 30th October 1989, the 1986 act was replaced by the *Residential Tenancies Act 1987*.

Figure 1 below traces the historical changes with the legislation relating to Landlord and Tenant history.

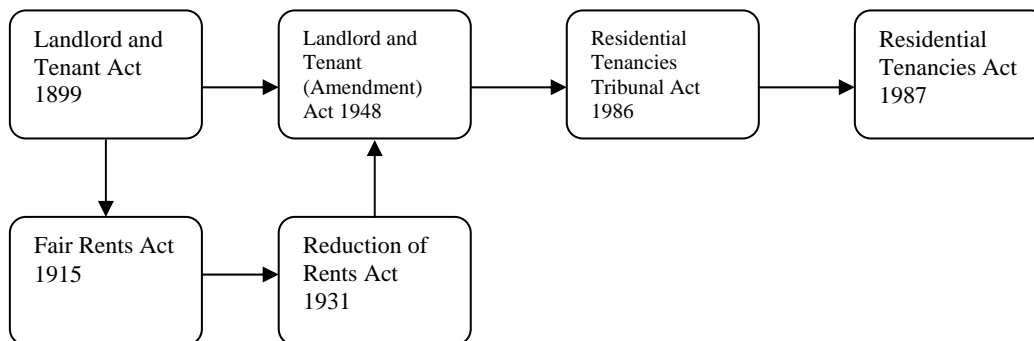


Figure 1

The first Act in 1899, the 1948 amended Act, and the 1986 and 1987 acts, as shown in Figure 1, relate to the New South Wales legislation, whereas the 1915 and 1941 acts are Commonwealth legislation. Currently the Office of Fair Trading administers the 1987 Act.

RESIDENTIAL TENANCIES TRIBUNAL

The Residential Tenancies Tribunal, was created under the 1986 Act for residential agreements, as an independent judicial body to hear disputes between landlords and tenants. The Tribunal regulates matters such as breaches of residential tenancy agreements and enforces compliances with the residential tenancy agreements. The Tribunal must act “according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal form” s93(4). The Tribunal is allowed to adopt “a broad approach of common sense and common fairness, eschewing all legal or other technicality” (Butt 1996). Also, the Tribunal must reach its decisions “on the basis that the applicant bears the general onus of proving his or her claim” (Butt 1996).

The *Residential Tribunal Act 1998* was introduced in 1999. This Act placed a greater emphasis on mediation and conciliation, with cases able to be heard by a single member or a multi-member panel, and in special circumstances, parties could apply for cases to be reheard.

RESEARCH OBJECTIVE

This paper will focus on those issues that relate primarily to Part 2 (the condition report) of the written tenancy agreement between the landlord and tenant. The research paper will examine the adequacies of the current legislation, whether or not the legislation meets the needs of today's changing landlord and tenant, and if in fact there is a need for the reform of Part 2 of the written tenancy agreement.

In conclusion, this research paper seeks to address if the present condition report accurately reflects the true condition of the premises both at the beginning of the tenancy and at the conclusion of the tenancy from the point of view from the tenant, and if in fact the use of visual aids enhance the completion of the condition report.

PURPOSE OF PART 2 OF THE WRITTEN TENANCY AGREEMENT

A condition report must be completed at the beginning and end of a tenancy. The purpose of the condition report is to record in writing "a true and accurate account of the condition of the premises" (Anforth and Thawley, 1998).

Therefore, at the beginning of each tenancy, the landlord must complete the relevant sections of the condition report which relates to the landlords opinion of the condition of the premises. The tenant must also complete their section on the condition report. The condition report is completed and signed in triplicate, by either the landlord or the agent and then passed over to the tenant for completion and signing. Items such as the cleanliness, stains on carpets, nails in the walls, etc is noted on the report, together with any other comments that are applicable.

It is very important that care is taken to correctly record this information, because a dispute might arise as to the true condition of the premises. If a comparison of the condition report at the beginning of the tenancy and at the end of the tenancy differs,

then the landlord may have grounds to claim compensation from the tenant. The Tribunal can refer to this written documentation to assist in resolving and determining the dispute.

DESCRIPTION OF VISUAL AIDS

The tribunal hears disputes on a wide range of residential tenancy matters, including disputes with the condition of the premises at the termination of the written tenancy agreement. Many landlords and tenants support their claims and disputes with the complement of visual aids. The most popular of these visual aids being digital photographs. There are other visual aids such as dated photographs from cameras and videos.

The old saying “*a picture says a thousand words*” appears to have slowly etched its way as a desired tool to use when recording and completing the condition report.

RESEARCH METHODOLOGY AND LIMITATIONS

A survey of tenants was undertaken and analysed. The questions asked in the survey focused on issues relating to the adequacy, process and accuracy of the condition report, and in conclusion possible recommendations to improve any shortcomings with the present system.

The research was from the perspective of the tenants with 120 surveys distributed yielding a response rate of 76%. The geographical area covered included the St George, Inner West and Eastern Suburbs of the Sydney Metropolitan area.

Some of the surveys were undertaken “face to face”, to capture respondents from non-English speaking backgrounds. The survey consisted of seven questions which were addressing issues such as the adequacy of the current condition report format, and the accuracy of its completion when compared to the completed report from the landlord.

FINDINGS AND DISCUSSION

QUESTION ONE

Was the completed condition report, given to you by the agent/landlord a true account of the condition of your premises at the beginning of your tenancy?

YES	91%
NO	9%

This question sought to clarify whether or not there was a major issue with regards to the accuracy in the completion of the condition report at the commencement of the tenancy. Interestingly, 91% of the respondents indicated that they were in agreement with the condition report. However, question 3 below appeared to indicate that the respondents at the beginning of the tenancy were unaware of the importance to accurately describe the true condition of the premises at the beginning of their tenancy.

QUESTION TWO

If you answered NO to question one, what were the discrepancies/differences between your observation and the written comments by the agent/landlord.

The purpose of this question was to identify if there were common discrepancies with the completion and description of the condition report. The respondents commented particularly on issues such as the cleanliness of the premises, marks on walls not correctly described, carpet stains not noted, appliances not working eg stove elements requiring replacement, windows not opening, room doors/cupboard doors jammed and not closing easily.

QUESTION THREE

Was the completed condition report, given to you by the agent/landlord a true account of the condition of your premises at the end of your tenancy? Give reasons where possible.

YES	82%
NO	18%

This purpose of this question was similar to question 1 where the research sought clarification on the accuracy of the description of the premises – although this was relating to the end of the tenancy.

The respondents were asked to answer either yes or no and were also given the opportunity to give reasons. The negative responses appeared to surface mainly from properties that had a change of property manager or the managing agent. The new property manager/agent had a different interpretation as to the state of the condition of the premises. Examples given included, the interpretation of “marks on the wall”, stained carpet, cleanliness of the premises, cleanliness of the stove, and expected ground maintenance for the garden. Additionally comments also included a need to clarify what constitutes “fair wear and tear”, as this area also causes disputes.

QUESTION FOUR

With regards to the condition report, does the current form adequately cover all scenarios with properties that you have rented in the past, and/or are currently renting?

YES	94%
NO	6%

This question sought an indication of the general satisfaction with the present form used for the condition report. The high favourable response rate at this stage indicates the adequacy of the condition report in its present form.

QUESTION FIVE

Which part of the condition report needs to be reviewed/changed?

The purpose of this question was to gather possible recommendations and changes that might enhance the presently used condition report. Comments from the respondents included the difficulty to accurately describe damage to walls, doors etc, marks on the door/wall, carpet stains, the level of damage as opposed to fair wear and tear on the condition report – pictures could help to prove the existing level of damage to a property at the commencement of the tenancy and then compared to the termination of the tenancy. Respondents also indicated a need for a scale of 1 to 10 to allow a better assessment of the condition of the premises, and the opportunity to complete the condition report at the beginning and end of the tenancy, with the same property manager.

Respondents who participated in the “face to face” survey, also indicated a need to better understand the importance of accurately completing the condition report. Even though they commented they had been given a renting guide to read, prior to signing the written agreement, these respondents were unaware of any possible ramifications at the end of their tenancy.

QUESTION SIX

Would visual aids assist to better describe the condition of your premises.

YES	27%
NO	73%

This question sought to extrapolate from the respondents whether or not there was a need for visual aids. Only 27% agreed that the visual aids would be of assistance in completing the condition report. Even though the question did not ask for reasons to be given, there were some comments included in the response, such as, “*who pays for the cost?*”, “*where is the proof that the pictures were taken at the beginning of my tenancy*”, “*what if the pictures were cleverly changed/touched up*”, “*only yes, if I*

could sign off on the accuracy of the pictures”. These comments from the tenants indicated a somewhat disbelief as to the accuracy and accountability over visual aids.

QUESTION SEVEN

Which visual aids would you recommend?

The purpose of this question was to determine any acceptable visual aids to assist in the completion of the condition report. The respondents commented on the use of cameras, digital cameras, videos, “and the latest in technology” for taking pictures as part of the completion of the condition report.

SUMMARY OF FINDINGS

There were seven questions and listed below in figure 2, is an overview of the findings from the respondents to the survey.

TABLE OF FINDINGS - SUMMARY

NO.	QUESTION	TENANTS
1	Accuracy of condition report at the beginning of the tenancy	Yes 91% No 9%
2	Discrepancies/differences between tenants and agents	Level of cleanliness Appliances not working
3	Accuracy of condition report at the end of the tenancy	Yes 82% No 18%
4	Satisfaction with current condition report form	Yes 94% No 6%
5	Recommended changes to condition report	Assistance to describe condition of premises eg a rating scale of 1-10 Key adjectives for descriptions Clearer understanding of wear and tear as opposed to damage caused by tenants.
6	Visual aids – do these assist	Yes 27% No 73%
7	Visual aids recommended	Cameras Digital equipment

Figure 2

Responses as shown in figure 2, indicate an overall satisfaction with the present form of the condition report, however, major discrepancies with the interpretation of the condition of the premises due primarily to change of property manager/agent and the descriptors used as opposed to “fair wear and tear.”

CONCLUSION

Whilst the Residential Tenancies Act sought to balance the rules for landlords and tenants, various tribunal hearings and orders indicate a level of discrepancy when comparing condition reports at the beginning and end of the tenancy. This paper focused primarily on issues with the current legislation and questioned whether or not there was a need to reform Part 2 of the written tenancy agreement.

The respondents were given seven questions in the survey, ranging from the accuracy of the condition report when compared to the description from the landlord/agent, to the question of whether or not changes were needed to the condition report format; and if in fact visual aids would better assist with the accuracy and completion of the condition report.

Overall, the respondents from the survey indicated that generally the present form for the condition report was acceptable, however issues such as understanding the importance of an accurate condition report at the beginning of their tenancy was not clearly understood by some of the respondents; respondents had some discrepancies with the completion and description of the condition report mainly based on the interpretation of the “level” of the condition of the premises; and a requirement for further clarification on the issue of “fair wear and tear”;

With regards to possible recommendations and changes that might enhance the presently used condition report, respondents indicated the difficulty to accurately describe damage, and also cited a need to complete the condition report at the beginning and end of the tenancy with the same property manager. It was also

suggested that a scale of 1 to 10, would give a better assessment of the condition of the premises.

When questioned over the use of visual aids only 27% of the respondents agreed that the visual aids would be of assistance in completing the condition report. The respondents appeared to be concerned over the accuracy and accountability of the visual aids. Respondents suggested that visual aids could include cameras, digital cameras, videos, “and the latest in technology” for taking pictures as part of the completion of the condition report.

The research paper sought to address if the present condition report accurately reflected the true condition of the premises both at the beginning of the tenancy and at the conclusion of the tenancy from the point of view from the tenant. The respondents indicated a 94% approval with the present form of the condition report. In conclusion, it would appear that from the perspective of the tenants, the condition report is adequate, together with some minor recommendations as mentioned. With regards to the suggestion of visual aids enhancing the condition reports, this was not well received by the respondents with only 27% agreeable to the suggestion.

Further research is currently being undertaken with Part 2 of the written tenancy agreement from the perspective of the landlord and agent. Once this research has been finalised a comparison of the responses between all groups i.e. tenants and landlords/agents will be undertaken, together with a statistical analysis of data from the Tribunal with regards to disputes and hearings on the adequacy of these condition reports.

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