

Ms Andrea Michaels MP
Minister for Consumer and Business Affairs
via email: MinisterMichaels@sa.gov.au

2 August 2023

Dear Minister

Residential Tenancies Act Review

I am writing to you in response to statements made by the Government concerning their resolve to abolish 'no grounds evictions'.

As you are aware, REISA very strongly opposed this reforms in its submission to Government last year. However, I would like once again, on behalf of our members, to reinforce our position and to canvass the alternatives that we proposed by way of a compromise.

Firstly, we would ask the Government to cease using the terminology of 'no ground evictions'. The use of this terminology is misleading and places landlords in the invidious category of ruthless and uncaring service providers. Evictions can only be ordered by SACAT and enforced by a SACAT appointed bailiff. A landlord choosing to exercise their contractual right not to renew a tenant's lease is not evicting the tenant, it is simply choosing not to renew the lease – an entirely different concept from an eviction.

It is the overwhelming view of REISA's membership that this reform is the most damaging and destabilising reform proposed by Government and is simply one that we cannot support. Removal of the right of a landlord to determine who lives in their property will certainly negatively impact upon present and future property investment in South Australia.

Both parties mutually agree on the term of the lease at the commencement of the lease. The tenant agrees that they will occupy the property for that period of time and vacate the premises at the expiry of that term. To now compel a landlord to extend the lease past that mutually agreed upon date is contrary to the most fundamental contractual principles.

REISA understands the rationale behind this reform and also receives complaints from tenants via its Query Connect hotline – tenants are being threatened (almost exclusively by private landlords) that their lease will not be extended if they pursue their statutory rights under the legislation (eg in relation to maintenance, housing standards, pets, subletting).

REISA agrees wholeheartedly that this practice must cease – but it can be accomplished in a much simpler way than making ALL landlords renew a lease they might not want to.

The solution is to simply amend the legislation to include a provision that if a tenant reasonably believes that a landlord has not renewed their lease as retaliatory action against the tenant, then the tenant can apply to SACAT to have the notice set aside. This solves the issue of the overbearing private landlord and does not impose an unfair and arbitrary impost upon the landlord who chooses not to renew the lease.

REISA notes that the Government has proposed prescribed reasons that will allow the landlord to not renew a fixed term lease. These include the tenant breaching the *Residential Tenancies Act 1995* (Act), the landlord selling, the landlord moving in or the landlord undertaking major renovations to the property.

While REISA remains unequivocally opposed to the abolition of no ground non-renewals (the better terminology), we understand that the Government is determined to proceed with this reform. In this event, we implore you to consider our recommendations below which will not only minimize the impact to landlords but also still adequately protect the interests of tenants.

Firstly, REISA recommends that landlords retain the right to not renew a tenancy without grounds for the first fixed term of a tenancy agreement. This will enable owners to "test" the capacity of a tenant to pay rent and care for the property (as well as the relationship they have with the tenant) before they are compelled to accept a tenant on an ongoing basis. If a landlord grants a renewal at the end of the first initial term, a landlord would be required to establish prescribed grounds to terminate for any subsequent terms.

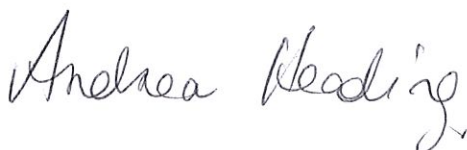
Secondly, REISA considers it imperative that additional prescribed grounds be added for the non-renewal of a lease. Under the Government's proposal, a repeated failure to pay rent on time would not amount to a breach of the Act (if remedied within time) but is obviously contrary to a landlord's interests. Additionally, a breach of the tenancy agreement (including of any special conditions) must be added to the list of prescribed grounds.

REISA proposes that the additional following prescribed grounds for ending a fixed term lease be specifically prescribed:

- A tenant fails to pay rent punctually on at least three occasions irrespective of whether or not the breach was remedied during the term of the tenancy
- A tenant fails to properly care for the property
- A tenant and/or visitor of the tenant causes damages to the property that is beyond fair wear and tear
- A tenant and/or visitor engages in illegal activity within the rental property
- A tenant commits a breach of the tenancy agreement (other than non payment of rent)
- A tenant and/or visitor has engaged in harassment, threatening or abusive behaviour towards the property manager (including an employee or contractor of the property manager), owner and/or towards neighbours.
- All the grounds currently stated in Section 81 of the Act for a periodic lease (termination after 60 days).

As always, I am happy to discuss any of the issues raised in this correspondence.

Kind regards



Andrea Heading
Chief Executive Officer